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Supreme Court, U.S.
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OFFICE

In The
SUPREME COURT OF THE UNITED STATES

October Term, 2001

GERALD D. BUSH,
CAROLYN BUSH
Petitioners,

v

ZEELAND, MICHIGAN
Respondent.

Pro se Petition For A Writ Of Certiorari
To The Chief Judge Of The Court of Appeals Of Michigan

PETITION FOR WRIT OF CERTIORARI

Pro Se By:
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October 23, 2001

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Questions

Pro se Petitioners have been prosecuted multiple times under Respondent's zoning ordinances, mostly for having unlicensed vehicles on their private property. This case involves a nuisance suit where the judge ordered Petitioners to remove everything outside buildings or Respondent could seize and sell Petitioners vehicles and other assets from their properties, which it did while motion for stay and rehearing was still pending. On appeal by right the Chief Judge dismissed because of lack of transcripts, which had been ordered. Because of the pre-mature dismissal, questions 3-8 are asked since their consideration was barred at the court of appeals.

1. Whether reversal is mandated in pro se Petitioners case where the Chief Judge of the state appellate court, acting without authority and in potential prejudice, at least, ruled "flatly contrary" (Arkansas v Sullivan, 121 S Ct 1876; 149 L Ed 2d 994 (May 29, 2001)) to the Supreme Court's rulings on the right of access to appellate review and right to transcripts in dismissing their only appeal by right granted by state authorities?

2. Whether appellate courts have a duty to protect the People from malicious contempt charges brought by a malicious prosecutor?

3. Whether reversal is mandated by opinion at initial court level in determining case and order to seize and sell Petitioners assets where "flatly contrary" (Arkansas, Id.) to this Court's rulings?

4. Whether Supreme Court will review "cannot enforce rights" abstention case resulting in triple jeopardy to Petitioners as promised in District of Columbia Court of Appeals v Feldman, 460 US 462 (1983)? (See App 35)

5. Whether zoning ordinance prosecutions resulting in convictions and punishments as misdemeanor, civil infractions and nuisance violate the Bill of Rights or 14th Am.? And whether jury trial is necessary as renewed protection against government in such prosecutions?

6. Whether civil infractions are civil or criminal, and, regardless of which they are, whether they violate protected Constitutional rights?

7. Whether unpublished state appellate court opinion finding local ordinance unconstitutional was controlling precedent on lower court judge who ignored it, and, considering the importance to settling the law and other rights of the People, should it have been published?

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This is an unpublished case.

PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN COURT OF APPEALS CHIEF JUDGE

Petitioners Gerald and Carolyn Bush respectfully request that a writ of certiorari issue to review the judgments of: the Michigan Court of Appeals' Chief Judge dismissing their appeal by right on Sept. 19, 2000 and Sept. 25, 2000, and their motion for reconsideration before a 3 judge panel on Nov. 6, 2000; the Court of Appeals decision refusing to protect them from unjust contempt charges and an unjust prosecutor made on Jan. 31, 2000; And to review lower court decisions, unreviewed as a result of the unlawful dismissal of the appeal by right mentioned above, filed on June 22, 1999 and Aug. 13, 1999. Petitioners believe, on review, all will be reversed.

JURISDICTION

This Court has jurisdiction under 28 USC 1257. The Michigan Supreme Court denied leave to appeal on May 29, 2001. (App 1) Extension of time was granted by Justice Stevens to and including October 26, 2001. (App 53)

CONSTITUTIONAL & STATUTORY PROVISIONS

The Constitution's introduction "establish[ing] Justice;" Constitution, Article VI; the Bill of Rights; the 14th Amendment and 28 USC 1654.

STATEMENT

Petitioners, Gerald and Carolyn Bush, respectfully pray that a writ of certiorari issue to review the orders of the Chief Judge of the Michigan Court of Appeals on Sept. 19, and Sept. 25, 2000 that resulted in the dismissal of their appeal by right and denial of reconsideration on Nov. 6, 2000 and lower court decisions.

1) Mr. Bush has for many years been a vocal critic and leader of resistance against Respondent's zoning ordinances which unjustly deprive the People of property rights and liberties and give Respondents agents

unrestricted dictatorial powers. Respondent, and its agents, does not like it.

2) Subsequently, Respondent has for years harassed and maliciously prosecuted Petitioners for having unlicensed cars on their private property under alleged zoning ordinances. First as misdemeanors, which Petitioners fought tooth and nail pro se, with substantial expenditures of time and money, lost and appealed. (See Trial Exh A at App 23) Then they were charged, and punished, again with the same offenses under a "new" civil infractions statute, that the Petitioners claim was conceived by the state as a means of depriving constitutional rights, including jury trial, double jeopardy, etc. and filling local government coffers. (Exh A) Mr. Bush challenged this new statute in Federal Court, also, and contended he was being put in double jeopardy in Federal Court. (App 28-29) But the parties and case were dismissed and no judgment was ever made on the constitutionality or double jeopardy. (See unpublished case, App 28-37) (Fn Fed. West. Dist. Mich. #1:97-CV-51 (Hillman) sj-Def; 6th Cir #97-2346 - dism'd - Petitioners could not keep up with all the appeals.)

3) Mr. Bush was also arrested, mug shot and fingerprinted, as a result of an illegal search of their property, but never charged, let alone convicted - civil rights violations for which he was also denied relief in federal court. Plus he has been harassed in many other ways, including being denied a pistol purchase permit by cop, who has long had animosity toward him and was also employed by Bush's employer, Zeeland Public Schools. (Fed. West. Dist. Mich. #1:97-CV-541 (Enslen) sj-Def; 6th Cir #99-1362 - dism'd. See note above) Yet Respondent's agents, under Respondent's direction, have persisted in making multiple searches of their properties' exteriors without search warrants and in pursuit of evidence to convict on Respondent's unconstitutional and invalid zoning ordinances. (See App 50-52, Plaintiff's Exhibit 7 & 8) (See also *Watson v City of Kansas*, #99-2106-CM published ??

) Plus their agents have repeatedly lied in court and police reports.

4) Respondent's agents previous to this also attempted to steal real property and did steal contractual and property rights from Petitioners by their normal attorney's lies. (Mich #96-25885-CH -removed; Fed. West. Dist. Mich. #1:96-CV-622 [McKeague] sj - Def.; 6th Cir #97-1739 - dism'd) In the same case, substantial amounts of Petitioners' limited income ($14,000) was taken unjustly for attorney fees with the assistance of a biased federal judge and Respondent's unjust "special prosecutor," Ken Breese. (6th Cir held in different case such fees unlawful against plaintiffs.)

5) In 1998, Mr. Bush was told, by Respondent's zoning enforcer (harasser), to quit fixing the weak and leaky roof of the porch of the same house Respondent and its agents attempted to steal at a low price (see above). (Fn The roof is still off and the porch's wood ceiling and floors are fully exposed to the snow and rain.) Again Breese prosecuted under Respondent's vague, oppressive zoning ordinance for no permit. (58th Dist Ct. #HL-98-3958-CM - guilty; Ottawa Co. Cir. #99-23296-AR - dism'd - no transcript.)

6) On appeal the state judge dismissed the case for lack of transcripts after the Defendant had filed his brief, and clearly did not need them to prove his case, because he challenged the ordinance. (See Pet p) (Petitioner paid an attorney $750 for trial, plus a fine of $150. Then he would have to purchase the transcript for no purpose, since it was not relevant?) (Did the Founders foresee the day when the People would be forced by prosecution to seek government's permission to fix your roof?)

7) A deposition in one of the above cases reveals that Respondent has been attempting to force Petitioners out of town.

8) Subsequently, the present "nuisance" case was instituted. (Fn Petitioners have come to the conclusion they

are the nuisances. Not their properties.) Allegedly this is a "civil" action. But Petitioners believe it has all the elements of a criminal prosecution, albeit an unjust one, in effect, at least.

9) Petitioners were charged with alleged, but very vague, nuisance violations related only to Respondent's zoning ordinances. (See Plaintiff's Exhibits 1 & 3, App 39-49) The charge was not supported by any state statute in direct contrast to *Bennis v Michigan*, 516 US 442 (1996). The charges involved all 4 pieces of property they own in Respondent's boundaries. (Fn) (Plaintiff's Exhibit 7 & 8, App 50-52) It was prosecuted as a "civil" case, which Petitioners claim violates their 6th Am. right to jury trials.

(Fn In contrast to what the judge says the properties are not all "residential." (App 13) 1 is single family residential, 1 is two family residential, 211 W. Main is zoned C2 commercial with a commercial building and parking lot; 119 N. Centennial, is C3 commercial, with a residence. The zoning allows work on commercial work on vehicles. Respondent's witnesses and attorney have persisted in falsely calling all properties residential and thus attempted to mislead the judge on these facts and apparently did, since his decision contends all are "residential." See App 13) But the truth is in the transcripts.

10) Petitioners' attorney did not file an answer. The Bushs only discovered a default had been granted the day of the initial hearing. The case was heard by a judge, without a jury. (Petitioners did not waive jury trial.) There were a few of the tapestries of a trial - witnesses. Respondent's witnesses testified that they trespassed and searched without warrants. Further, that they had harassed Petitioners by taking pictures over fences without warrants. (See App 50-52) And admitted they had prosecuted on the same offenses before. (But the transcripts are not available.)

11) Petitioner's witness, Dr. Jack Down, President of a nationwide organization opposed to oppressive zoning, testified that government property rights violations and

zoning harassment has resulted in substantial violence nationwide and some tragic deaths and injuries, both to police and property owners and almost always these disputes involve vehicles and property liberties.

12) Mr. Bush prepared a motion to dismiss on several grounds: (1) double jeopardy, (2) controlling authority in unpublished Court of Appeals precedent (1982) finding such ordinances unconstitutional (App 24-27) And other grounds also. Despite the testimony and the compelling evidence to dismiss, the judge convicted Petitioners. He commented on some of the defenses, but did not support his decision with a single authority. He ordered them to dispose of everything on their properties outside of buildings within 45 days. (Super oppressive!) (App 12-15)

13) Petitioners pro se then had to move for rehearing and stay of the order. When many weeks had passed and no ruling was made on the Motion, Mr. Bush prepared a trespass-lease-contract and sent it to Respondent before the 45 days expired. That did not deter them either. On August 9, 1999, despite the pending motion for rehearing and stay, Respondent and "special prosecutor" Breese ordered the seizure of, conversion of, and sale of all Petitioners' assets outside of buildings. (Fn The authorities agree that orders, such as this, are stayed by a motion for rehearing. "Generally, a timely request for rehearing automatically suspends the finality of the underlying order. *United States v Dieter*, 429 US 6, 50 L Ed 2d 8, 97 S Ct 18 (1976) *United States v Healy*, 376 US 75, 11 L Ed 2d 527, 84 S Ct 553 (1964)" *In Re Suresh "C" Shah*, 859 F.2d 1463, 1464 (1988, 10th Cir). Therefore, among the other numerous violations, Petitioners' Due Process rights were violated by the seizure. (Fn See vehicles listed App 50-52a)

14) The seizure was accomplished in true gestapo fashion - heavily armed early morning surprise attack. 18 vehicles were seized and titles jumped, new titles obtained and the vehicles sold to others. Snowplowing business equipment was seized and sold, tools included. The Bushs

received nothing. Not the tools, money, air compressor or many many other contents of the vehicles including new items.

15) Mr. Bush called and contacted the FBI, the Michigan State Police and Justice Dept. No one did a thing. They said there was a judge's order. (On a judge's order the Constitution can be annulled?) A few days later the judge denied the motion for rehearing and stay. (App 10-11)

16) Petitioners appealed by right and paid the fee. Mr. Bush called the court reporter to order the transcripts. She told him to send her a letter, which he did. (App 16) The COA docket confirms this fact, since Mr. Bush provided them a copy of the letter. (App 17) The court reporter did not respond, as required. MCR 7.210(B)(3)

17) Some time later the clerk complained to Mr. Bush about the lack of transcripts. (App 6) Bush responded objecting to the decision to put the burden on him. The clerk demanded a fee first. (App 5)

18) But then the Chief Judge of the Court of Appeals intervened and sua sponte struck Petitioners objections to the clerk. (App 4) Within days he then dismissed their appeal by right. (App 3) Thus he denied Petitioners access to the courts, ruling "flatly contrary" to the Supreme Court. *Arkansas v Sullivan*, ____US_____, 121 S Ct 1876, 149 L Ed 2d 994 (2001) (*Bounds v Smith*, 430 US 817 (1977) He also denied them the transcripts for appellate purposes, again "flatly contrary" to rulings of the Court. *Arkansas, supra.* (*MLB v SLJ*, 519 US 102; 117 S Ct 555; 136 L Ed2d 473 (1996)

19) Petitioners moved for rehearing before a constitutionally and statutorially required 3 judge panel. But again the Chief Judge denied the them relief. (App 2)

20) The Bush's then had to, within only 21 days, seek leave to appeal of the Michigan Supreme Court, which was denied, as it usually is for decisions without a Court of Appeals decision. (App 1) Petitioners then attempted rehearing within the meager 21 days allowed, but because they mailed it on Monday, when it was due on Tuesday,

and the mail did not deliver it until Wed. they were prevented from that chance at justice also.

21) However, there was an intervening event that deserves mention because it demonstrates Respondent's motives to harass. *Declaration of Independence; Brown v Socialist Workers*, 459 US 87 (1982) (Socialist Workers Party ". . historically has been the object of harassment by Government Officials . .").

22) In fall of 1999, Mr. Bush bought a truck and trailer to replace the others the city had "taken" and had them at his house. In January, 2000, "special prosecutor" Breese brought contempt charges against Petitioners. (App 8-9) But there was no order to be in contempt of. Therefore the Bush's moved by emergency ex parte motion at the Court of Appeals for stay and to disqualify the prosecutor for malicious contempt prosecution.

23) The clerk refused to accept the motion contending the COA judges had an "understanding" with the clerks that no ex parte filings would be accepted. By this time the Bushs were very afraid of this Prosecutor and feared he would throw them in jail on the contempt charge knowing it was a sham charge. Petitioners paid $300 for the emergency motion and 2 supplemental motions. And still by Friday, with contempt hearing looming on Monday, they had no decision. Not even a stay. On Monday at noon they received a phone call that the motion had been granted and all relief denied. (App 7) Chief Judge Bandstra was a member of that panel.

24) As can be seen from the facts, this case is here, first, because the "trial" judge's long time court reporter refused to do her duty and provide a cost for the transcripts so Appellants could secure them. Secondly, its here because the COA Chief Judge would not allow a court order be issued causing her to produce them. Thirdly, its here because the Chief Judge dismissed Petitioners appeal by right. Fourthly, its here because he denied Petitioners rehearing before an unbiased, unconflicted three judge

panel. Fifth, it is here because the Michigan Supreme Court refused to grant leave, which they rarely do for pro se litigants.

25) Petitioners realize the facts are long and detailed. But these brief glimpses only scratch the surface of the long term harassment Petitioners have suffered. Now it is a triple jeopardy case, a takings case, an access case, etc.

26) In short, this Court has heard "cannot enforce" cases before, but the Bush cases are "impossible to enforce" cases. Do you think maybe it is because they are pro se?

REASONS FOR GRANTING THE PETITION

I. REVIEW SHOULD BE GRANTED BECAUSE THE JUDICIAL RULINGS ARE UNJUST, MADE WITHOUT AUTHORITY, AND ARE "FLATLY CONTRARY" TO THIS COURT'S RULINGS.

1. THE RULING OF THE CHIEF JUDGE DISMISSING THE BUSHS' APPEAL BY RIGHT SHOULD BE REVERSED BECAUSE HE ACTED WITHOUT AUTHORITY, WAS NOT AN UNBIASED DECISIONMAKER AND RULED "FLATLY CONTRARY" TO THE THIS COURT AND OTHER SUPERIOR AUTHORITIES.

The unjust dismissal of Petitioners appeal by right to the Michigan Court of Appeals should be considered in conjunction with the unjust dismissal of Mr. Bush's appeal to the Court of Appeals in Petition #00-1796 (Cert den, mot for rehearing pending). The Chief Judge did not have authority in either case and foreclosed appeals in both unjustly on separate grounds. In #00-1796 he had a direct a conflict of interest.

A. The Chief Judge Ruled "flatly contrary" To The Well Settled Rulings Of This Court On The Right To Transcripts For Appellate Purposes And Should Therefore Be Reversed.

See Statement of the case at 16 - 18 for facts concerning ordering the transcripts.

This Court has ruled repeatedly in cases from *Griffin v Illinois*, 351 US 12 (1956) to *Mayer v Chicago*, 404 US 189 (1971) *MLB v SLJ*, 519 US 102 (1996) that there is a right to transcripts, even making the states pay for them. This case is different in that Petitioners ordered the transcripts but they were not produced. In that respect it is like the facts in *Antoine v Byers & Anderson, Inc.* 508 US _____ (1993) (immunity question). There the court reporter did not produce the transcripts for years and delayed a convict's appeal for 4 years. Therefore, it is clear that securing transcripts for appeal is a problem for appellants.

The question here is should the Petitioners (Defendants) lose their appeal by right because of a court reporter who failed (or refused) to respond to requests for transcripts? Petitioners say absolutely not and claim their Due Process and Equal Protection rights are violated. But the Chief Judge of the Court of Appeals disagreed and struck their pleadings (App 4) dismissed their appeal. (App 3)

In *England v Louisiana St. Brd Med. Exam.*, 375 US 411, 427, 11 L Ed 2d 440, 84 S Ct 461 (1964) this Court quoted James Madison saying "`What was to be done after improper verdicts, in state tribunals, obtained under the biased directions of a dependent judge, or the local prejudices of an undirected jury?'"
The question remains valid. And it is unanswered.

Petitioners claim their Due Process and Equal Protection rights are violated.

The unpublished transcripts in this case reveal much important appellate information. From Petitoners' witness, Jack Down, President of CARZ (Citizens Against Repressive Zoning) a nation wide organization opposed to oppressive

zoning ordinances, it was revealed that several, if not many, American citizens have fought and died protecting their privacy, property and other constitutional rights against unbridled municipal zoning zealots and "compliant, biased or eccentric judge[s]." (See *Burch v Louisana*, 441 US 130, 135 (1979) quoting *Duncan v Louisiana*, 391 US 145, 156 (1968) in *Owen v City of Independence*, 445 US 622, 63 L Ed 2d 673, 100 S Ct 1398 (1980))

The Michigan Court Rules provide guidance for appeals. MCR 7.210(B)(1)(a) concerns the Appellant's duty to order the transcript on appeal. Petitioners met the requirements. MCR 7.210(B)(3) concerns the duties of the court reporter. None were met. MCR 7.210(B)(3)(f) concerns the discipline that can be provided by the "court" * * * "on the court's own initiative or motion of a party."

In *People v Cole*, Mich , 595 NW2d 823 (1999) the Supreme Court ordered the Court of Appeals to order the court reporter to "promptly prepare a transcript of all the proceedings . . . or to appear before that court [Court of Appeals] to explain why the reporter should not be held in contempt of that court."

Petitioner raised this precedent issue at the COA. (See Petitioner's COA Motion for Reconsideration, p 9) But the Chief Judge vetoed it.

B. The Chief Judge, Ruling Without Lawful Authority, Dismissed Petitioners Appeal By Right And Should Therefore Be Reversed.

Petitioners were supposed to have an appeal by right of the circuit court's decision to the Michigan Court of Appeals. The right is provided both by statute (MCL) and the Michigan Court Rules (MCR). MCL 600.308 and MCR 7.203(A)(1). The Michigan Constitution and legislature created the Michigan Court of Appeals in panels of 3 elected judges. (Michigan Const. Art. VI, sec 8,9,10; MCL 600.311) No authority in either was granted to a chief judge or a single judge. (MCL 600.301-600.321) But, despite these

limitations, the COA Chief Judge usurped authority he did not have and dismissed Petitioners' appeal by right without reasonable or just cause. (App 3,4) And then denied review by a lawful three judge panel. (App 2)

The Bushs sought review of the Chief Judge's acts by the Michigan Supreme Court by leave - denied. (See Lv to Appeal, p 11-17, & Ques 1,2,3,6,8) (App 1)

The events leading up to this dismissal concern transcripts and the court reporter's (willful or dilatory?) refusal to produce them. Petitioners did their part in ordering them at the time of appeal. (App 16) The details follow.

First the COA clerk notified Petitioners about the lack of transcripts on July 5, 2000. (App 6)

The Bushs responded on July 26, 2000 with a filing called OBJECTION TO DISMISSAL FOR LACK OF TRANSCRIPTS, REQUEST FOR HEARING and included their letter to the court reporter as App 2.

They then received a letter dated August 7, 2000 demanding $75 for a motion fee, after the clerk sua sponte converted their objection to a motion. (App 5) There is no rule or statute creating a fee to contest a court clerks ruling. The clerk created the fee demand only by converting the objection to a motion. Why did not the clerk demand the transcripts from the court reporter? Or some reason why she had not responded? The Bush's didn't send the fee. (They had already paid over $500 in fees and for what?)

On Sept. 19, 2000 Chief Judge Bandstra struck their OBJECTIONS for failure to pay the fee citing MCR 7.211(A)(2). (App 4)

MCR 7.211(A) states in relevant part "(A) Manner of Making Motion. A motion is made in the Court of Appeals by filing: (1) 5 copies of a motion . . . (2) the entry fee.") But the Bush's had not made a motion.

Then on Sept. 25, 2000 COA Chief Judge DISMISSED Petitioners' appeal by right allegedly for lack of transcripts. (App 3)

(Fn Petitioners submit that this is the second time a transcript issue has been used by a biased pro gov't state judge to beat them over the head. This fact points to a significant problem. Bush was not able at the time to appeal that case here (see facts later).

Mr. Bush was charged with a building permit violation in 1998 and unjustly convicted. He appealed, contesting the zoning ordinance was unconstitutional, and filed his brief. He didn't order the transcript, since it was not needed and would have substantially increased the cost of an unjust conviction on him and his family, who had a limited income. (Mr. Bush had not been working since 1993.) The following events occurred.

2-11-00 Bush filed appeal brief - 11p
2-23-00 Respondent filed motion to dismiss - no transcripts - & appeal brief.
2-25-00 Order signed to dismiss appeal. (J. Ed Post) (no oral argument, no notice to Bush of signing.)
3-1-00 Bush sent his response to motion to dismiss 5p
3-13-00 Breese (Respondent) mailed signed order to Bush.
3-14-00 Bush received signed order to dismiss. *****
3-17-00 21 days to appeal by leave to C/A expired. *****

(appeal by leave requires Bush prepare the whole appeal including the brief in 21 days - from the filing of the order.) (Bush spent $750 for attorney, $150 fines, $ appeal fees, to prove ordinance unconstitutional and then denied the chance. Court of Appeals fee would have been another $250. Is this a business or what?)

C. The Court of Appeals Chief Judge Acted Without Authority Dismissing Petitioners' Appeal Motion For Reconsideration.

The weight of injustice increases when consideration is given to the "Chief Judge's" disposition of Petitioners' Motion for Reconsideration. On October 16, 2000 the Bushs timely submitted their MOTION FOR RECONSIDERATION BEFORE A THREE JUDGE PANEL AND FOR

SUPERINTENDING CONTROL (over the chief judge) and paid another $75 (Fn) motion fee. (Fn A total of $625 to date and still not one meaningful decision on the merits of the case or a motion.) Again they submitted their letter to the court reporter as proof of fulfillment of their duty. (See Mot. App 1) Petitioners assumed the motion would be heard by a three judge panel, therefore they boldly argued the Chief Judge had no authority and challenged his power to dismiss. (Motion, at p 6-9) But they were mistaken. The Chief Judge decided it on November 6, 2000. (App 2) No doubt his emotions were re-inflamed against the Bushs. He dismissed the motion without comment on the merits or submitting it to a 3 judge panel. Obviously, he did not want a panel to consider his actions and find them unjust and unauthorized.

The Motion for reconsideration and rehearing rule is MCR 7.215(H). It does not mention the chief Judge at all. The clear intent is that the motion would be decided by a 3 judge panel. But, without regard to the correct rule, the Chief Judge dismissed the motion, via his own hand, without submitting it to a 3 judge panel. (App 2) That power is certainly not contained in MCR 7.211(E)(2). So, to further cover his judicial obstruction of justice, the CJ dismissed the motion for reconsideration under MCR 7.217(A) "Dismissal of No Progress Cases." This rule allows such dismissal under some circumstances, none of which were present. Additionally, it authorizes the chief judge to take "other action as is deemed appropriate" (C) - such as ordering the court reporter to produce the transcript. Instead, the Chief Judge deliberately obstructed the Petitioners attempts to secure a court order to force the court reporter to produce the transcripts.

MCR 7.214(E)(1) requires decisions by a "panel" of judges to "dismiss" and do other acts "without oral argument". The chief judge also denied Petitioners the right of oral argument.

Alternatively, to whatever extent MCR 7.217 would apply to prevent Petitioners appeal by right, they contend it is unconstitutional.

The Chief Judge's action violates Due Process of law in several respects. He has no authority, since authority resides in three judge panels, and he has a conflict of interest deciding a motion challenging his authority.

The motion for reconsideration also cited the precedent setting case of *People v Cole*, ___ Mich ____, 595 NW2d 823 (1999) (Id. p 9) In Cole the state Supreme Court ordered the Court of Appeals to order the court reporter to

> "promptly prepare a transcript of all the proceedings . . . or to appear before that court [Court of Appeals] to explain why the reporter should not be held in contempt of that court."

But again the Chief Judge paid no attention to precedent, specifically to the Supreme Court's decision, and instead ruled "flatly contrary" to the Michigan Supreme Court in *Cole*. *Arkansas v Sullivan*, ____US_____, 121 S Ct 1876, 149 L Ed 2d 994 (2001)

Petitioners claim Due Process and Equal Protection of the law, on the basis of this precedent and believe it should have provided them the same rights as in *Cole*, despite the fact they are pro se. 28 USC 1654; 14th Am.

(Fn From this precedent it is evident that procuring transcripts is a substantial problem in Michigan. (Especially so for pro se litigants who may not know what to do in cases like this.) Here the hearing was video taped, thus the court reporter could have been ordered to provide the tape and someone else transcribe it. But that is a court power, not Petitioners.)

Petitioners contend that, since the Chief Judge acted without authority or in dereliction of authority, his

judgment and orders are void, should be reversed and their case should be reinstated. (Alternatively, they prefer to have this Court decide the issues, because they fear more retaliation in the Michigan Courts.)

D. The Chief Judge Was Not An Unbiased Decisionmaker And Therefore Should Be Reversed.

This Court has ruled that an unbiased decisionmaker is a necessary right in judicial proceedings. *Liteky v US*, 510 US ____, 127 L Ed 2d 474, 114 S Ct ____, (1994) And when there is not one, it is grounds for appeal. Id. L Ed 2d 490-491. The Chief Judge was not unbiased.

1. The Docketing Statement

Petitioners contend he was biased by the required docketing statement required by the Court of Appeals at the initial filing. Petitioners were required on appeal to file a docketing statement. They answering the questions honestly and truthfully.

Question 8 asked for a"Brief description of the nature of the action and the result in the trial court. (General conclusionary statements such as the "the judgment of the trial court is not supported by the law or fact" are unacceptable.)" The Bushs response was on separate paper and has been reproduced in the Appendix. (App 22)

Question 9 wanted a Brief statement of all issues to be raised in this appeal. (This information will also be used to place cases on different processing tracks so it is important to be as accurate as possible.)" The Bushs responded and called the lower court judge a "renegade" and said other things that Bandstra probably did not like, in effect, indicting the states judicial system. (App 22)

Petitioners contend Chief Bandstra had access to this information and considered this information in his various decisions. *Tocco v Marquette Prison Warden*, 123 Mich App 395, 400; 333 NW2d 295 (1983) ("the report appears in a hearing record and must be assumed to have been have been considered as evidence."

In addition, the Docketing Statement (App 17-21) provided by the Court of Appeals has information on it that is not available to the public (or the Petitioners, in this case.) (See note on App 21)

Obviously the information the Bushs submitted in answer to the Docketing Statement is an indictment of the state's judicial system. Some judges in responsible positions would be extremely interested in surpressing such facts and accusations and making absolutely sure they would never see daylight in court decision or briefs, least it might hit the news media. Petitioners contend the Chief Judge had the same interest. (All the accusations of the Docketing Statement are provable, if not already proven.)

2. The Emergency Motion

The Bushs filed an emergency motion seeking protection from a contempt charge by the Respondent, its prosecutor and the "trial" judge. (App 7a) Bandstra was a member of the panel. There also the Bushs made serious charges against the Respondent and its attorney and contested (verbally and by phone) some of the Court of Appeals judges private "understandings" with the clerk re: ex parte filings, etc. No doubt Bandstra as Chief Judge, was involved behind the scene, with this stuff. Plus all the judges had access to the docketing statement information mentioned above.

3. Mr. Bushs Tenure Case.

Chief Judge Bandstra was the primary sponsor of Teacher Tenure Act amendments, which are totally unconstitutional, and Mr. Bush has been fighting to get reversed. (Petition #00-1796)

Before the events here, Bandstra, acting alone and without authority, or unconstitutionally dismissed Mr. Bush's appeal by right to the Michigan Court of Appeals - unjustly denying him any appeal. The Bushs' contend he has

a "deep-seated . . antagonism" toward them that "makes fair judgments impossible."

> "opinions formed by the judge [from] facts. . . do not constitute a basis for a bias or partiality motion unless they display a deep-seat favoritism or antagonism that would make fair judgments impossible." Liteky, supra, L Ed 2d at 491.

For these reasons the Chief Judge was not an impartial decisionmaker and his dismissal of Petitioners appeal by right should be reversed.

2. THE RULING OF THE COURT OF APPEALS PANEL THAT INCLUDED THE CHIEF JUDGE SHOULD BE REVIEWED WHERE THEY REFUSED TO PROTECT THE BUSHS FROM MALICIOUS CONTEMPT CHARGES BY RESPONDENT.

Chief Judge Bandstra was on a COA panel that considered the Bushs Emergency motion for protection from an unfounded contempt charge. The Court of appeals ruled against protecting the Bushs and therefore they had to go and defend themselves while facing jail, when there was no order they could have violated. (App 7, 8)

The Court of Appeals needs to be told a few things by the Supreme Court about their duty as a place of "peaceful resolution of disputes" (*Groves v Ring Screw Works*, 498 US 168, 112 L Ed 2d 508, 514, 111 S Ct 498 (1990)) and their duty to protect the People from government (*DeShaney*, post, quoting *Harris*). Reversal would be a start. Mr. Bush firmly believes they were and are biased and prejudiced against him, as well, because he has filed various appeals pro se contending they violate the laws and constitution.

3. THE RULINGS OF THE TRIAL JUDGE SHOULD BE REVIEWED AND REVERSED BECAUSE HE ACTED AGAINST THE AUTHORITIES, DID NOT DECIDE THE FACTS OR LAW REASONABLY OR JUSTLY AND THEN UNJUSTLY ALLOWED THE CONFISCATION AND SALE OF THE BUSHS ASSETS.

A. Petitioners Had A Double Jeopardy Defense That Was Ignored Resulting In Triple Jeopardy.

At the "trial" witness evidence proved the Bush's had been prosecuted for the same offenses before. So also did the evidence entered. (Defendants Exhibit A, App 23) All the charges are for the same offense of having unlicensed vehicles on private property. (Exh A - the offenses begining with 95 and later are civil infractions.)

The Judge mentioned the Double Jeopardy defense, but dismissed it without mentioning any facts or authorities. (App 14) As a result Petitioners suffered Triple Jeopardy.

The judge's decision is "flatly contrary" to *Abney v US*, 431 US 651 (1977); *Montana Dept of Rev. v Kurth Ranch*, 511 US _____, 128 L Ed 2d 767, 773 (1994); *US v Dixon*, 509 US 688 (1993). See *Arkansas v Sullivan*, ____US_____, 121 S Ct 1876, 149 L Ed 2d 994 (2001) All these cases were cited in Petitioners' Motion To Set Aside Default & Motion To Dismiss, #98-32500-CZ, p 3. Both the double conviction and double punishment aspects of Double Jeopardy were violated.

Reversal on this basis is warranted. *Arkansas, Id.*

B. Petitioners Had Unconstitutional Ordinance Defenses That Were Ignored.

a.) Unpublished decision defense.

The Bushs had an unpublished state Court of Appeals decision directly on point that they submitted to the judge with their motion to dismiss finding similar ordinances unconstitutional many years earlier. The case at issue here, *Flint v Bibbs*, was made by by an authorized 3 judge panel. (App 24-27) The judges also cited cases of

innocent conduct. (This Court has recently done the same *Chicago v Morales*, 572 US 41 (1998)) The decision should have been dispositive. But the judge never applied the superior authority of that decision to the case. (App 13-15) (These ordinances outrageously invade property liberties.)

The Supreme Court and the Federal Courts consider unpublished opinions when provided. (See 10th Cir Rule 36.3(B) & (C))

Secondly, Petitioners argued that their's, and many other Michigan residents, Due Process rights were severely violated by the lack of publication. Third, that the US Supreme Court needs to set some Due Process standards for publication of such decisions, where it is apparent the issue has been decided and should have been controlling.

b.) State Law pre-empted defense.

Petitioners contend Respondents zoning ordinance applied here is pre-empted by the State Motor Vehicle statute.

Respondent has unlawfully and without authority extended state law requiring registration of vehicles using the streets and highways to private property by its own ordinance.

In *Morales v TWA*, 504 US 374, 383 (1992) this Court considered pre-emption, which petitioners contend is the standard of review of this issue.

> "As we have often observed, "pre-emption may be either express or implied, and is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose." *FMC Corp. v Holliday*, 498 US 52, 56-57, 112 L Ed 2d 356, 111 S Ct 403 (1990) (internal quotation marks omitted); *Shaw v Delta Air Lines, Inc*, 463 US 85, 95, 77 L Ed 2d 490, 103 S Ct 2890 (1983). The question, at bottom, is one of statutory intent, and we accordingly "'begin with the language employed by Congress and the assumption that the ordinary

meaning of that language accurately expresses the legislative purpose.'" *Holliday, supra*, at 57; *Park ' N Fly, Inc. v Dollar Park & Fly, Inc.*, 469 US 189, 194, 83 L Ed 2d 582, 105 S Ct 658 (1985)."

The Motor Vehicle Code does not pre-empt local ordinances with specific language. But it is implied by its "structure and purpose" and history.

Taking the later first, the vehicle code was enacted in roughly 1915, Act 302 (amended 1925, Act 287). Zoning ordinances were not even approved by the United States Supreme Court until *Euclid v Ambler Realty Co.*, 272 US 365, 71 L Ed 303, 47 S Ct 114 (1926). Furthermore, Respondent's ordinance is of much more recent vintage, although it is rather vague as to date of enactment and amendment.

Secondly, the purpose of the Motor Vehicle Code is to prevent thief and to tax for roads. MCL 257.801 Vehicular taxes are priviledge taxes for use of state's highways. *Ziegler v Witherspoon* (1951) 49 NW 2d 318, 331 Mich 337

Thirdly, the structure of the Act is such that the state assumed all the powers necessary to its enforcement and did not leave any to local lawmakers. Furthermore it is absolutely clear that the intent was for it to only apply to vehicles using the streets and roads.

Fourth, Petitioners have never been cited for unregistered vehicle under the state statute (See MCL 257.255) by Respondent, but only under Respondent's oppressive zoning ordinance. The reason is because Petitioners vehicles were always on their private property and not traveling the "highways." MCL 257.255 (case ?)

c. Vagueness And Arbitrary Defenses

The Petitioners raised vagueness and arbitrariness defenses initially by motion to dismiss. But the judge gave them little consideration. In fact he dismisses the authorities cited without citing any for his opinion. (App 14)

C. The Judge Unjustly Rejected These Defenses And Other Arguments On Motion For Rehearing And Stay, And Unjustly Sat On The Motion Until Petitioners Property Was Seized And Disposed Of.

There is no doubt the judge sat on the Motion For Rehearing and Stay until it was too late. The Bushs property-assets were seized on August 9, 1999. The judge gave his opinion on the motion on August 11, 1999. (App 11) It was filed August 13, 1999. (App 10)

II.

REVIEW SHOULD BE GRANTED BECAUSE THIS CASE IS ONE OF TRIPLE JEOPARDY, PREVIOUSLY RELIEF WAS DENIED IN FEDERAL COURT AND BECAUSE THE COURT PROMISED TO REVIEW.

Mr. Bush has complained pro se a number of times to this court by petition about the inability to enforce basic constitutional rights in the Michigan courts, including enforcing the rulings of this Court. (Most recently in 00-1796, cert den 10-1-01) This petition is in the same line with two exceptions. One is that previously Federal court relief was attempted also and denied. (It was in 00-1796 also, see #97-1645 cert den.) Secondly, this one is criminal - misdemeanor, civil infractions, nuisance - and involves triple jeopardy, at least.

Petitioners were first charged and convicted of misdemeanor zoning offenses. (See Exh A, reproduced in App 23, case numbers beginning 86 - 94) Then civil infractions offenses for the same zoning acts. (95-96) Mr. Bush then sought relief in federal court when the state judge and magistrate ruled against double jeopardy protections. Bush also challenged the constitutionality of the civil infractions act. Injunctive relief was denied first. (App 28-29, note ref. to "civil infraction judgment" and "double jeopardy", etc.) Then various defendants were dismissed. (App 30, 31) Next the judge rendered an opinion (App 32-36) mentioning the fact that Mr. Bush had claimed "double

jeopardy" protection in the civil infractions prosecution and been denied. (App 34) He then turned to this Court's rulings on abstention and Younger and dismissed the rest of the case. (App 34-36) Lastly he said, citing Younger etc., that relief was only available in the "United States Supreme Court." (App 35)

Petitioners contend this Court has made in *District of Columbia Court of Appeals v Feldman*, 460 US 462, 486 (1983), or implied at least, a substantial promise to review such cases. Petitioners request, based on the *Feldman* promise, such review.

After each of the prosecutions and convictions, the Bush's had to pay fines, etc. (Def. Exh A, App 23) The Bushs also appealed each time contending the ordinances were unconstitutional, etc. Id. Always their pleas and authorities fell on deaf ears, or, most likely, ears not willing to hear. (This case has the same problem.)

The facts continue beyond the federal court decision of October 17, 1997. In 1998 the Bush's were charged again with violating the City's zoning ordinances by having unlicensed cars on their private property. But this time they charged the Bush's with nuisance violations in a "civil" case in circuit court. The goal this time was to seize the offending vehicles and dispose of them once and for all (which Respondent and its agents did).

The Bush's again raised various defenses, including Double Jeopardy, unpublished Court of Appeals case as precedent, vagueness, taking property without compensation, etc. None of it mattered. The judge found for the City. (App 13-15) He granted Respondent the right to take their property in 45 days if they did not move it off or put it in buildings. Petitioners didn't move it and Respondent took it - 18 vehicles, trailers, snowmobile, motorcycle, snowplows, mowers, tools, too many things to even list.

As Mr. Bush has said several times before, supposedly he and the People have "substantial rights,"

(Fn "As we said in *Harris v McRae*: `. . . the liberty protected by the Due Process Clause affords protection against unwarranted government interference . . ., . . . ' 448 US, at 317-318, 65 L Ed 2d 784, 100 S Ct 2671 (emphasis added)." *DeShaney v Winnebago Co. Dept of Soc Serv.*, 489 US 189, 196, 103 L Ed 2d 249, 109 S Ct 998 (1989))

But, as this case demonstrates, if rights (or right) are not enforceable, do they have any rights at all? This case, as all the other Bush cases except one (wrongly decided), found its way to this Court with virtually no reviewing court decision on the merits. That is typical for pro se litigants. The fact is, this state has, for some, a closed courthouse door policy. (You slide your money under the door and they say "see you later sucker.")

The major problem with this alleged "protection" of various rights is the protections are not available in state courts, due to their prejudice against pro se litigants and political sensitivities, where they have 100% discretion to review or not. And therefore, due to the so called Younger doctrine and abstention, review is only available at this Court. And to be honest, the People of the state involved in litigation, are getting mighty tired of it being this way. Some have been agitated to violent actions, as the transcripts would reveal, were they available here.

The Respondent has literally wasted years of Petitioners' lives with prosecutions, appeals, briefs and wasted much of their money with fees, costs and fines because of Respondent's unjust "interference" in their lives. Id.

It should further trouble this Court that Respondent, via another of its unethical attorneys stated to Petitioners that Respondent was attempting to force the Petitioners out of town. (Deposition of Carolyn Bush, - unjustly dismissed via sj Mich #96-25885-CH -removed; Fed. West. Dist. Mich. #1:96-CV-622 [McKeague] sj - Def.; 6th Cir #97-1739 - dism'd)

The Court should also note that Respondent can prosecute Petitioners at any time for any so called alleged violation in order to keep them from perfecting appeals to state and federal courts and to retaliate and harass.

In fact, during the original 90 days allowed for making the Petition for Writ of Certioari in this case, 2 additional prosecutions were instituted against Petitioners via Zeeland Police and they were harassed by another property rights incident involving parking. Almost all based on alleged property and zoning offenses. Since extension of time was granted new charges again were filed under zoning civil infractions ordinances concerning unlicensed cars. Respondent can, and does, literally force Petitioners to chase their tail like a dog.

If "protection from unwarranted [and unjust] government interference" was ever needed it is here and now. Id.

Yet, in contrast to protections provided by the Constitution, Bill of Rights, and civil rights laws, this Court has held that no recovery can be obtained from unjust, excessive and oppressive arrests (See *Atwater v City of Lago Vista*, 532 US ___(2001); Arkansas, supra, concurring) The same is likely true in these harassment prosecution cases. Zeeland has a license to harass already, granted by the state courts. It doesn't need a federal one.

Review should be granted in these impossible to enforce rights state cases to decide what is the problem and can be done to fix it or what other relief can be granted.

III.
REVIEW SHOULD BE GRANTED BECAUSE CIVIL INFRACTIONS AND ZONING ORDINANCES AT ISSUE VIOLATE THE CONSTITUTION.

First Petitioners would like to inform the Court that they have spent considerable time and money on appeals, transcripts, fines etc in attempting to challenge the Constitutionality of civil infractions laws and ordinances, without decisions on the merits. Plus they have been

convicted numerous times under them. So they have a substantial "investment" in defending the Constitution against this outrageous invasion.

This Court has not decided, that Petitioners are aware of, whether civil infractions violate the Constitution or not. (See App 28-29 and 6th Cir citation) Petitioners have contended (Fed case #1:97-CV-51, see App 28-39) and still contend they do.

There are many reasons why they do, but selecting just Double Jeopardy may be evidence enough for now. Consider Respondent's ordinance first. (Entered as Plaintiff's Exhibit 3; reproduced in App 46-47 at C & D. "Each day . . separate offense . .) Obviously, double jeopardy is not protected.

Then consider the evidence. (Defendants Exhibit A, App 23) All the charges are for the same offense of having unlicensed vehicles on private property. On Exh A the offenses begining with 95 and later are civil infractions.

Both the double conviction and double punishment aspects of Double Jeopardy have been violated.

Then, the third violation is this case, where Respondent decided double trial, conviction and punishment was not enough. They did it a third time, this time as nuisance and taking all the offending assets without any compensation and at great financial, and other, loss.

This does not include the other 4th, 5th, 6th, 9th and 14th Am. violations Petitioners have discovered.

IV.
THE NUISANCE TRIAL WAS AN UNCONSTITUTIONAL SHAM. IT WAS DISGUISED AS CIVIL, DENIED PETITIONERS A JURY TRIAL AND MALICIOUSLY EXTENDED ZONING BY VAGUE CHARGES.

Respondent has malicously and unconstitutionally extended its limited powers by contending nuisance and zoning violations.

In effect, if not in fact, the proceedings were criminal in nature and Defendants were deprived of their substantial rights to jury trials. The basic elements of a crime were there - prosecutor, charges by government under guise of law, government witnesses against the Defendants, severe punishment - seizing, stealing and selling assets. But there was no jury trial, under either Const. Art. III, sec 2; 6th, or 7th Amendments; or under Mich. Const. Article 1, Sec 14, Sec 20. Therefore, Petitioners claim it was unconstitutional in this respect also.

Should the proceeding be found civil, Petitioners still claim their rights to jury trial were denied, since they did not waive them. They claim the same authorities.

And Petitioners have some additional state case law authority for a jury trial in a nuisance cases. *Caldwell v Gale*, 11 Mich 77 (1862) (jury trial prior to appeal); *Beard v State*, 106 Mich App 121 ( )

Trials with out juries were criticized in *Tumey v Ohio*, 273 US 510 (1926) where the municipality stood to benefit. Is there a big difference here? They benefit from civil infractions revenue.

In addition, Petitioners were prosecuted by a biased prosecutor. *Young v US*, 481 US 787 (1987) held there is a right to be prosecuted by impartial prosecutor.

CONCLUSION

It is therefore respectfully requested that, since there are substantial rights violations and violations of this Court's rulings, the Petition should be granted.

Respectfully submitted,

Gerald D. Bush &
Carolyn Bush
724 E. Central
Zeeland, Mich. 49464
616-772-2398

_____ _____

Gerald D. Bush Carolyn Bush
October _____, 2001

Date: _____

Michigan Supreme Court
Lansing, Michigan

ORDER
Entered: May 29, 2001
118147

Maura D. Corrigan,
Chief Justice
Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

CITY OF ZEELAND,
Plaintiff-Appellee,
v
GERALD D. BUSH and
CAROLYN L. BUSH,
Defendants-Appellants

SC: 118147
COA: 221983
Ottawa CC:
#98-32500-CZ

On order of the Court, the application for leave to appeal from the September 25, 2000, decision of the Court of Appeals is considered, and it is DENIED because we are not persuaded that the questions presented should be reviewed by this Court.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 29, 2001 Clerk /s/ Corbin R. Davis

aO522 (seal of the court)

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: City of Zeeland v Gerald Bush
Docket No. 221983
L.C. No. 98-32500-CZ

Richard A. Bandstra, Chief Judge, acting under MCR 7.217(A), orders:

The motion for reinstatement of appeal is DENIED.

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on Date 11-6-00

Chief Clerk /s/ Carl L. Gromek
(seal of the court)

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: City of Zeeland v Gerald Bush
Docket No. 221983
L.C. No. 98-32500-CZ

Richard A. Bandstra, Chief Judge, acting under MCR 7.217(A), orders:

The above appeal is DISMISSED for want of prosecution, appellant having failed to ensure the timely filing of the transcript.

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on Date : 9-25-00

Chief Clerk /s/ Carl L. Gromek
(seal of the court)

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: City of Zeeland v Gerald Bush
Docket No. 221983
L.C. No. 98-32500-CZ

Richard A. Bandstra, Chief Judge, acting under MCR 7.211(E)(2), orders:

Defendant's Motion in Objection to Dismissal for Lack of Transcripts is STRICKEN for failure to conform with MCR 7.211 (A)(2).

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on Date 9-19-00

Chief Clerk /s/ Carl L. Gromek
(seal of the court)

STATE OF MICHIGAN
COURT OF APPEALS
Grand Rapids Office

RICHARD A. BANDSTRA, CHIEF JUDGE, WILLIAM C. WHITBECK, CHIEF JUDGE PRO TEM, DONALD E. HOLBROOK, JR., MICHAEL J. KELLY, HAROLD HOOD, ROMAN S. GRIBBS, DAVID H. SAWYER, GARY R. MCDONALD, MARTIN M. DOCTOROFF, WILLIAM S. MURPHY, MARK J.CAVANAGH, RICHARD ALLEN GRIFFIN, JANET T. NEFF, KATHLEEN JANSEN, E. THOMAS FITZGERALD , HELENE N. WHITE, HENRY WILLIAM SAAD, JOELP.HOEKSTRA, JANE E. MARKEY, PETER D. O'CONNELL, MICHAEL R. SMOLENSKI, HILDA R. GAGE, MICHAEL J. TALBOT, KURTIS T. WILDER, BRUKN K. ZAHRA , JEFFREY G. COLLINS, PATRICK M. METER, DONALD S. OWENS, JUDGES, CARL L. GROMEK, CHIEF CLERK, RESEARCH DIRECTOR SANDRA SCHULTZ MENGEL, CHIEF DEPUTY CLERK

August 7, 2000
Mr. Gerald Bush 724 E. Central Zeeland, MI 49464
Re: City of Zeeland vs. Gerald Bush
Court of Appeals No. 221983
Lower Court No. 98-032500-CZ
Document Submitted:
Objection to Dismissal for Lack of Transcripts

Dear Mr. Bush:

This office has received your papers in the above captioned matter. Your submission is defective because it was not accompanied by the following:

Motion fee of $75 [see MCL 600.321 (1997 PA 182)]

The court rules do not provide for the filing of an objection to the involuntary dismissal letter. Therefore, we have treated your objection as a motion under MCR 7.21 I (A).

Unless the above is filed within 21 days of this letter, your papers will be returned to you or stricken.

Very truly yours,

Lori Zarzecki District Clerk
By: /s/ Candace K. Strong
Candace K. Strong

LZ/cks
cc: Kenneth B. Breese
(list of court addresses omitted)

(LIST OF JUDGES OMITTED)
State of Michigan
Court of Appeals
Grand Rapids Office

July 5, 2000

BUSH, GERALD
724 E. CENTRAL
ZEELAND MI 49464

RE:
CITY OF ZEELAND v GERALD BUSH
Court of Appeals No. 221983
Lower Court No. 98-32500 CZ

Dear Appellant:

Our records indicate that you filed an appeal in this matter but have failed to perfect the appeal by acting to ensure the timely filing of the transcript. The matter is now eligible for INVOLUNTARY DISMISSAL or other action under MCR 7.217. If the transcript is not filed [or other appropriate action taken as outlined in our Internal Operating Procedure 7.210(B)(3)-2] within 21 days of the date of this letter, you will be assessed $200 costs and may suffer dismissal of the appeal (if you are retained counsel) or remand to the trial court for the appointment of substitute counsel (if you are appointed counsel).

If the parties have settled or appellant wishes to abandon the appeal, you may file a stipulation to dismiss (with defendant's affidavit if you are appointed counsel in a criminal appeal). The stipulation must be signed by counsel of record for all parties pursuant to MCR 7.218.

Yours very truly,
/s/ (intials) LZ
Lori M. ZarzeckiDeputy Clerk

CG: CSTRONG
CC: BREESE KENNETH B
(court locations omitted)

Court of Appeals, State of Michigan

ORDER

David H. Sawyer,
Presiding Judge
Richard A. Bandstra
Michael R. Smolenski,
Judges

City of Zeeland v Gerald Bush
Docket No. 221983
LC No. 98-32500-CZ

The Court orders that the motion for immediate consideration is GRANTED. The Court further orders that the motion for ex-parte stay and the disqualification of opposing counsel is DENIED. The motion to waive the court rule requirements is DENIED.

/s/ David H. Sawyer
Presiding Judge

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on 1-31-00. /s/ Carl L. Gromek Chief Clerk
(seal of the court)

STATE OF MICHIGAN
IN THE 20TH CIRCUIT COURT
FOR THE COUNTY OF OTTAWA
414 Washington Street
Grand Haven, Michigan 49417 (616) 846-8315

CITY OF ZEELAND,
Plaintiff,
-V-

File No. 98-32500-CZ
Honorable Calvin L. Bosman

GERALD BUSH and CAROLYN BUSH
Defendants.

Kenneth B. Breese (P 27177)
CUNNINGHAM DALMAN, P.C.
Attorneys for Plaintiff
321 Settlers Road,
P.O. Box 1767
Holland, Michigan 49422-1767
616/392-1821

Gerald D. Bush Carolyn L. Bush
IN PRO PER
724 E. Central
Zeeland, Mi.
49464
616/772-2398

ORDER TO SHOW CAUSE
ORDER

At a session of said Court held in the Circuit Courtrooms for the County of Ottawa, State of Michigan, on this 11th day of January, 2000.

PRESENT: Honorable Calvin L. Bosman . Circuit Judge

THIS MATTER having come before the Court by verified petition of the City of Zeeland alleging a continuing nuisance and contempt, this court having reviewed the petition and exhibits attached to it, it is hereby ordered that Defendants, Gerald D. Bush and Carolyn L. Bush, appear before this court on the. 31st day of January, 2000 at 2:30 o'clock in the after noon to show cause why they should not be held in contempt of this court.

It is further ordered that a copy of this order be served upon said Defendants no later than seven (7) days prior to the time set for hearing.

/s/ Calvin L Bosman

Honorable Calvin L. Bosman

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

CITY OF ZEELAND,
Plaintiff,

v FILE NO. 98-32500-CZ

GERALD BUSH and CAROLINE [sic] BUSH,
Defendants.

NOTICE OF OPINION AND ORDER

Please take notice that on the 13th day of August 1998 [sic] and Opinion and Order was filed in this cause.

Kenneth B. Breese
Attorney at Law
Plaintiff / Attorney P.O. Box 1767
Holland MI 49422-1767

Philip Sielski,
Attorney at Law
Defendant/ Attorney 234(1/2) Washington
Grand Haven, MI 49417

I herby certify that copies of the Opinion and Order were served upon the parties/attorneys of record in this cause on the 13th day of August 1999 by ordinary mail.

DANIEL C. KRUEGER, OTTAWA COUNTY CLERK
/s/ Sandra VandenBosch, Deputy Clerk of the Court
:sjg

State of Michigan
IN THE CIRCUIT COURT FOR THE
COUNTY OF OTTAWA

CITY OF ZEELAND,
Plaintiff,

v

OPINION and ORDER
File No. 98-32500-CZ

GERALD BUSH and CAROLINE BUSH,
Defendants.

This is an action to abate a nuisance. Defendants bring a motion for "rehearing and temporary stay" of this Court's opinion and order of June 21, 1999.

Motions for rehearing are governed by MCR 2.119(F). No response to the motion may be filed, and there is no oral argument unless the court otherwise directs." MCR 2 .119 (F) (2). MCR 2.119(F)(3) provides in pertinent part, "Generally, and without restricting the discretion of the court, a motion merely presents for rehearing or reconsideration the same issues ruled on by the court either expressly or by reasonable implication, will not be granted."

This Court finds that defendants' motion presents merely the same issues ruled on by the Court in the opinion and order of June 21, 1999. Therefore, defendants' motion for rehearing and temporary stay is denied.

It is so ordered.

/s/ Calvin L. Bosman
Calvin L. Bosman, Circuit Judge
Dated: August 11, 1999

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF OTTAWA

CITY OF ZEELAND
Plaintiff,

VS. NOTICE OF OPINION AND ORDER
FILE NO. 98-32500-CZ

GERALD BUSH and
CAROLYN BUSH
Defendants

Please take notice that on the 22nd day of June 1999 an Opinion and Order was filed in this cause.

TO:
Kenneth B. Breese
Attorney at Law
Plaintiff/Attorney
P.O. Box 1767,
321 Settlers Road
Holland, MI 49422

Philip R. Sielski
Attorney at Law
Defendant/Attorney
234 1/2 Washington Street,
P.O. Box 281
Grand Haven, MI 49417

I hereby certify that copies of the Opinion, and Order were served upon the parties/attorneys of record in this cause on the 22nd day of June 1999 by ordinary mail.

DANIEL C. KRUEGER, OTTAWA COUNTY CLERK
By: /s/Francis M (unreadable) Deputy Clerk of the Court
bm

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

CITY OF ZEELAND,
Plaintiff,

v

File No. 98-32500-CZ
Judge: Calvin L. Bosman

GERALD BUSH and
CAROLYN BUSH,
Defendants,

OPINION AND ORDER

Plaintiff, City of Zeeland, brings this action seeking to abate a nuisance maintained by defendants. The City requests that this Court order defendants to remove various items described by the City as junk from four parcels of property owned by defendants. Each parcel owned by defendants is zoned residential. The four parcels are located at 724 E. Central Ave., defendant's residence, and other property located at 211 W. Main; 215 Alpine; and,119 N. Centennial.

The items include but are not limited to the following:

at 211 W. Main - four unregistered motor vehicles;
at 215 Alpine - five unregistered motor vehicles,
at 119 N. Centennial - five unregistered motor vehicles;
at 724 E. Central - four unregistered motor vehicles.

Additionally, on the various properties are stored an auto transmission, an inoperable lawn mower, water tanks, numerous tires and various car parts.

Zeeland's ordinance prohibits the outside storage of unlicensed motor vehicles or disassembled motor vehicles on residentially zoned property. City Ordinance 303.8.1. Section 1.1100 of the Ordinance describes "junk" as:

> Any worn out or discarded materials including, but not necessarily limited to, scrap metal, inoperable motor vehicles and parts, construction material, household wastes, including garbage and discarded appliances, and (page 2) yard debris.

Most of the items on the four properties fall under the Ordinance definition of junk, or unlicensed motor vehicles.

Defendants defends his action on the basis of double jeopardy as he has been previously criminally prosecuted by the City and the 58th District Court for maintaining these above described items on his property in violation of the Ordinance. Although the facts may be the same there is a difference between being criminally prosecuted twice for the same act and the City's efforts through a civil suit to abate a nuisance. The later is not a criminal action and criminal sanctions cannot be imposed and therefore does not constitute double jeopardy.

Defendant also claims: "The charge is vague and arbitrary and therefore violates the Constitution First Amendment." Defendant cites some criminal cases in support of this claim. The Ordinance very clearly describes the proscribed conduct. There is nothing vague about it at all.

Defendant also claims: The City is attempting to take from them property without just compensation contrary to the 5th and 14th Amendments of the United States Constitution. The City is not attempting to take any property from defendant. The City is merely attempting to get defendant to store his treasures in a lawful manner, something defendant cannot do on residentially zoned property unless it is stored within a building.

Finally: Defendant claims they "have the right to be left alone and right to pursue happiness". Defendant's argument is a veiled way of saying that zoning ordinances should not be enforced.

Defendant raises several other issues in his brief, none of which (page 3) apply in this case. The accumulated items located on the four properties are, for most part, in violation of Zeeland's ordinance. Maintaining them the residential property in the fashion done by defendant does constitute a nuisance.

DEFENDANT'S ARE HEREBY ORDERED To remove all such unlicensed and/or inoperable motor vehicles, all motor vehicle parts, inoperable machines and equipment and other items described by the Ordinance as junk which is not stored inside. Said removal shall be completed within 45 days from the date of this opinion and Order. In the event it is not voluntarily removed by defendants the City shall have the right to remove any items remaining on defendant's four properties which are stored in violation of the ordinance and dispose of it in any manner it deems appropriate including sale which it may apply to the cost of removal. Neither defendant nor their agents shall interfere with the City's efforts to remove said property if not moved within the time allotted the defendants.

Dated: June 21, 1999

/s/ Calvin L. Bosman
Calvin L. Bosman
Circuit Court Judge

Mr. & Mrs. Gerald Bush
724 E. Central
Zeeland, Mich. 49464

Sept. 1, 1999
Tanya _____
Court Reporter
Ottawa County Circuit Court
414 W. Washington
Grand Haven, Mich.

Dear Tanya:

RE: City of Zeeland v Bush, #98-32500-CZ.

This note is to follow up our phone conversation of August 31, 1999. At that time I requested that transcripts be made for appeal purposes in this matter. You requested that we put the request in writing.

The only dates I have records of when there were any hearings were 3-22-99 and 5-28-99. If you are aware of any others we would appreciate knowing of them.

Thank-you.

Sincerely yours,
/s/ Gerald Bush
Gerald Bush

(DOCKETING STATEMENT)
Docket No.: 221983

MICHIGAN COURT OF APPEALS

No. 221983-F
CITY OF ZEELAND V GERALD BUSH
1 ZEELAND CITY OF PL-AE
RET
(27177) BREESE KENNETH B 321 SETTLERS RD P 0 BOX 1767
HOLLAND MI 49422-1767 616/392-1821
2 BUSH GERALD DF-AT
PRO
724 E CENTRAL ZEELAND MI 49464 616/ 772-2398

3 BUSH CAROLYN DF-AT
SAM

Status: Case Concluded; File Archived Track: Regular

09/02/1999 (1) **Claim of Appeal - Civil**
Proof Of Service: 09/02-/1999 Check No.: 547 Fee: $250.00
Assistant Clerk: TJR
(HAUGEN 10/04/1999)

06/22/1999 (2) **Order Appealed From**
Nature Of Case: - Judgment for Plaintiff
From: OTTAWA COUNTY CIRCUIT COURT
Case Number: 98-032500-CZ
Trial Court Judge: BOSMAN CALVIN L
(HAUGEN 10/04/1999)

09/03/1999 (9) **Transcript Requested by Atty or Party**
Date: 09/01/1999
Reporter: 312 - KELLY TANJA D
Comments: 3/22/99; 5/28/99 (CSTRONG 07/05/2000)

09/13/1999 (6) **Appearance - Appellee**
Date: 09/10/1999 For Party: 1 (HAUGEN 10/04/1999)

10/01/1999 (7) **Docketing Statement MCR 7.204H**
Proof Of Service Date: 09/30/1999 Trial Days: 2
Future Settlement Likely: N For Party: 2 DF-AT Posture:
BENCH Nature: Civil Procedure Real Property Zoning
(HAUGEN 10/04/1999)

01/27/2000 (10) **Motion: Stay**
Check No.: 565 Fee: $225.00 Immediate Consideration: Y For Party: 2 DF-AT Comments: Ex-parte stay and to disqualify opposing counsel (LZARZECKI 01/31/2000)

01/28/2000 (11) **Motion: Waive MCR 7.209 re Trans &/or Orders**
Check No.: 566 Fee: $75.00 Check No.: 566 Fee: $75.00 For Party: 2 DF-AT Comments: waive requirement that motn be filed in lct & waive service (LZARZECKI 01/31/2000)

01/31/2000 (12) **Submitted On Special Motion Docket**
Event: 10 Motion: Stay
Event: 11 Motion: Waive MCR 7.209 re Trans &/or Orders
District: G Panel: DHS,RAB,MRS Item Number: 1
(LZARZECKI 01/31/2000)

01/31/2000 (13) **Verbal Order To Parties-Phone**
Comments: DENY motn for ex-parte stay, disqual counsel & waiver of court rule;
GR I/C (LZARZECKI 01/31/2000)

01/31/2000 (14) **Order Deny - Generic** **CSTRONG**
Event: 10 Motion: Stay
Event: 1 1 Motion:Waive MCR 7.209 re Trans &/or Orders
Panel: DHS, RAB, MRS
Immediate Consideration Granted
Comments: Ex-parte stay & disqual. DENIED; Waive Court Rule req. DENIED

02/08/2000 (15) **Correspondence Received For Party: 2**
Comments: Regarding service of the Court's 1/31/2000 order (LZARZECKI)

02/11/2000 (16) **Correspondence Sent (LZARZECKI)**
For Party: 2
Comments: Response to letter regarding service of Court's 1/31/2000 order

07/05/2000 (17) **Invol Dismissal Warning - No Transcript**
Due Date: 07/26/2000 (CSTRONG)

07/24/2000 (18) **Miscellaneous Receipt Date: 07/24/2000**
Check#: 592 Amount: $1.00 (JCONATSER)

07/26/2000 (19) **Motion: Motion*** Defective ***
Proof Of Service: 07/26/2000 Answer Due: 08/02/2000 For Party: 2 DF-AT
Comments: OBJECTION TO DISMISSAL FOR LACK OF TRANSCRIPTS **(RMACHIELA)**

08/07/2000 (20) **Defective Filing Letter** Event: 19 (CSTRONG)

09/12/2000 (21) **Submitted On Administrative Motion Docket** Event: 19 Motion: Motion District: G
Panel: RAB, (JCONATSER)

09/19/2000 (22) **Order: Strike - Administrative - Defect Uncured** Event: 19 Motion: Motion Panel: RAB, (RMACHIEELA)

09/19/2000 (23) **Submitted for Involuntary Dismissal**
Event: 17 Invol Dismissal Warning - No Transcript
Disthct: G Panel: RAB, (JCONATSER)

09/25/2000 (24) **Order: Dismissal - INVOL** - Rehearing 56 Days Event: 17 Invol Dismissal Warning -No Transcript - Panel: RAB., (JCONATSER) (end Page 2 of 4)

10/16/2000 (25) **Motion: Reinstate Case** - 7.217 - 56 Days Proof Of Service: 10/16/2000 Notice Date: 10/31/2000 Check No.: 607 Fee: $75.00 Answer Due: 10/30/2000 For Party: 2 DF-AT (CSTRONG 10/18/2000)

10/18/2000 (26) **Correspondence Sent For Party: 2** Comments: RE Multiple motions, one fee (CSTRONG 10/18/2000)

10/20/2000 (27) **Answer - Motion Event No.: 25** Proof Of Service: 10/19/2000 By Party: I Attorney: BREESE, KENNETH B (RHAUGEN 10/23/2000)

10/31/2000 (28) **Submitted On Rehearing Docket** Event: 25 Motion: Reinstate Case - 7.217 - 66 Days District: G Panel: RAB, Item Number: 1 (JCONATSER 10/31/2000)

11/06/2000 (29) **Order: Rehearing - Deny - Close Appeal** Event: 25 Motion: Reinstate Case - 7.217 - 56 Days Panel: RAB, (RHAUGEN 11/06/2000)

11/27/2000 (31) **Application for Leave to SCt Supreme Court No.: 118147** Notice Date: 12/26/2000 Check No.: 19413 [sic] Comments: pro per 724 E Central Zeeland 49464 (DAVISC 11/27/2000)

11/30/2000 (32) **Miscellaneous Filing** Event Date: 11/30/2000 By Party: 2 Comments: appndx/suppi to appl (MILLSJ 12/01/2000)

12/13/2000 (33) **Supreme Court - File Sent To**
File Location: Z
Comments: SC#l 18147 (MMCELWEE 12/13/2000)

12/14/2000 (34) **COA File - Received**
(CARLTONE 12/14/2000)

12/18/2000 (35) **Brief in Opposition to SCt Application**
Event Date: 12/18/2000 By Party: 1 Attorney: 27177 -
BREESE KENNETH B (MILLSJ 12/18/2000)

12/27/2000 (36) **Trial Court Record Received**
Comments: LCF, 1 ENV/EXH FROM OTTAWA
(CARLTONE 12/27/2000)

12/28/2000 (37) **SCt Notice Letter Sent**
Proof Of Service: 12/28/2000 (CORTSK 12/28/2000)

05/29/2001 (38) **SCt Order:Deny** (DAVISC 05/29/2001)

06/06/2001 (39) **Supreme Court - File Ret'd By - Close Out**
File Location: F (SMACKAY 06/06/2001)
(end Page 3 of 4)

06/20/2001 (40) **Miscellaneous** Event Date: 06/20/2001 By
Party: 2 Comments: LATE MOTION FOR
RECONSIDERATION RETURNED TO PRO PER DF-AT
Filing (CORTSK) 06/22/2001
(end Page 4 of 4)

Inquiry Printed On:06/29/2001 12:17:58 PM Public Listing
Complete Thank You, JCONATSER
http://www.gr.gov/caseinq/caseprtrtn.asp?casenumber--
221983&caseyear--O@ ... 06/29/200112:20:46 PM

DOCKETING STATEMENT ADDITION

8. Mr. Bush has been an outspoken critic of the City of Zeeland and their oppressive ways and laws for years. For many years he has been harassed by the City of Zeeland with both criminal prosecutions and civil infractions prosecutions for alleged violations of petty and oppressive city ordinances affecting private property.

The City filed a nuisance suit against the Bush's for having unlicensed cars and personal property that the City did not like and that was stored outside of buildings on 4 pieces of private property owned by the Bush's.

The Bush's hired an attorney who did not file an answer. Subsequently default was entered and hearings held. The City attempted to prove everything the Bush's had outside of buildings was "junk". The Bush's moved to dismiss the case. The motion was denied.

Then Judge Bosman ordered the Bush's to remove everything that was outside of buildings within 45 days. The Bush's pro se filed a motion for rehearing.

After the 45 days were up, the City with the Police and hired persons made a secret 5:30 am surprise attack on the private property of the Bush's. They took everything they wanted from the private property of the Bush's including vehicles, business equipment, signs, etc. even one licensed vehicle. They gave everything but the vehicles to a junk yard. The confiscated vehicles are being held by the same junk yard and presumably are incurring storage charges. (The Bush's are barred from access to them.)

Within days after the seizure Judge Bosman denied the motion for rehearing.

9. Renegade Judge. Limits on judge authority. Refusal to follow superior court precedent. Double jeopardy. Invalidity of nuisance law.

(DEFENDANTS' EXHIBIT A, 5-28-99)
BUSH LITIGATION AND INCIDENT SUMMARY - PARTIAL SUMMARY ONLY

Case Number	Date of Incident	Offense	Sentence
86 - 1145	May 13, 1986	Junk car	$20.00
86 - 2062	July is, 1986	Junk car	?

94 - 630 - CM - Feb. 14, 1994 Junk Car $59 court costs. Fine suspended (case appealed to Judge [Ed] Post who upheld the conviction.)

94-1979-CM & 94-1379-CM - May 18, 1994
Gerald and Carolyn Bush Ct 1: storage of Parts outside of Bldg; Ct 2: Junk (Case appealed to Judge Nykamp by the Defendants. Defendants have never filed brief.)
[Have since filed brief and had the same unjust result. GB]

95-2208-OV - June 5, 199S - Unlicensed Vehicle - $100 fine $500 costs (Defendant has ordered transcript to appeal.)

95-2209-OV - June 5, 1995 Unlicensed Vehicles - $100 fine, $500 costs (Defendant has ordered transcript to appeal,)

95-2210-OV -June 5, *1995* Unlicensed Vehicle - Dismissed (Officer had put "E'" instead of "W" on ticket for address of Property)

96-3923-OC
96-3331-OC - Sept. 14, 1996 Unlicensed vehicles - $144 fines and costs for each vehicle, total of $1,152 fines & costs

Note also: Gerald Bush v Zeeland Public Schools
(Bureau of Worker's Disability Compensation claim School attorney: Thomas H. Cypher from Cholette Perkins & Buchanan)
Correction Order from City of Zeeland dated September 5, 1995 regarding store 211 West Main not meeting City Property Maintenance Codes.)

State of Michigan
COURT OF APPEALS

City of Flint,
Plaintiff-Appellant,

(stamped) April 26, 1982
v No. 52759

Hezekiah Samuel Bibbs,
Defendant-Appellee

Before: Beasley, P.J., T. M. Burns and Quinnell, JJ.

PER CURIAM

Defendant was charged under an ordinance of the city with allowing a partially dismantled, operating, wrecked, junked or discarded vehicle to remain on his property for more than 15 days. Flint City Code, [secs] 28-34 and 28-35. On July 11, 1979, the date on which this cause was to be tried in district court, defense counsel orally moved to dismiss on the ground that defendant had "a right to put his cars in his driveway". The district court judge agreed and dismissed the case finding that the ordinance was "absolutely unconstitutional". Plaintiff appealed to the circuit court which affirmed the decision of the district court. Plaintiff's application for leave to appeal was granted by this Court in an order dated January 20, 1981.

Defendant is the owner of certain residential property in the city of Flint. On February 7, 1979, defendant was informed by a city police officer that he would have 15 days within which to remove four vehicles on his property and that if he failed to do so, he would be cited for violating [secs] 28-33 through 28-35 of the Flint City code. On March 12, 1979, the police returned to defendant's residence and discovered that three vehicles remained on the property. The three vehicles were a red Dodge van with two flat tires

that was filled with trash, a green Buick (p 1) Wildcat with two flat tires that also was filled with trash and a red Buick Opal. Two of these vehicles did not have current license plates and defendant stated to the police officer that none of them could be started.

The police issued defendant an appearance ticket charging him under the above cited provisions of the Flint City Code. On July 11, 1979, the date scheduled for trial, defense counsel orally moved without prior written notice for dismissal of the charges on the ground that the ordinance violated his rights as a property owner. The lower court agreed.

Plaintiff first argues that defendant's motion to dismiss should not have been granted by the district court because it was not brought in conformity with the provisions of DCR 108.4 and DCR 110.2(1). In pertinent part, DCR 110.2(1), provides:

"An application to the court for an order in a pending action shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefore and shall set forth the relief or order sought."

DCR 1108.4 in relevant part states:

"A written motion other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 4 days before the time specified for the hearing unless a different period is fixed by these rules or for good cause shown and in such latter event, authorization by the court shall be endorsed in writing on the face of the notice or by separate order."

It is apparent from the record that defendant's oral motion to dismiss was not made 'during a hearing or trial". Therefore, it should have been made in writing pursuant to DCR 110.2(1) and served not later than four days before the hearing under DCR 108.4. Nonetheless, reversible error has not occurred.

Although plaintiff noted at the hearing in which defendant's motion to dismiss was made that defendant had not given four-day notice of his motion plaintiff did not (p 2) contend that it was not prepared to argue against it. Rather plaintiff argued against the motion on its merits. Although we do not countenance the failure of counsel to follow the procedures specified in the court rules, we find that plaintiff has not been prejudiced in this case. .

Plaintiff next argues that the trial judge erred in holding that [sec]28-34 of the Flint City Code was unconstitutional. Plaintiff contends that the ordinance was valid exercise of its police power inasmuch as automobiles that are filled with trash, partially disabled, or incapable of operating pose a hazard to small children. Plaintiff also notes that such automobiles are breeding grounds for disease, rodents and other vermin and that they have a detrimental impact on the health of persons in the vicinity.

Municipal ordinances are presumed to be valid. A party attacking the constitutionality of the ordinance has the burden of showing that it bears no substantial relationship to the public health, morals, safety or general welfare of the municipality. Austin v Older, 283 Mich. 667; 278 NW 272 (1938); Detroit v Bowden, 6 Mich App 514; 149 NW2d 771 (1967). A municipal ordinance that prohibits innocent conduct having no tendency to endanger the health, safety, welfare or morals of a community is constitutionally overbroad. City of Fremont v Beatty, 53 Mich App 137; 218 NW2d 799 (1974).

Plaintiff's authority to adopt the ordinances before us in this case is sufficiently grounded in the powers granted municipalities under art 7, [sec] 21 of the Michigan Constitution, const 1963, art 7 [sec] 21, and the Home Rule Cities Act, MCL 117.4j(3); MSA 5.2083(3). However, plaintiff's ordinance bears no real or substantial relationship to public health, morals, safety or general welfare insofar as it concerns automobiles that merely are inoperative or lacking current license plates. Such automobiles pose no threat to public health or safety (p 3) and because the

challenged ordinance prohibits persons from, permitting such vehicles to remain an their property for more than 15 days, it is unconstitutionally overbroad. Therefore, we affirm the circuit court order finding [sec] 28-35 of plaintiff's ordinances unconstitutional.

The record discloses that defendant was not charged under [sec] 28-33 of the city's ordinances and that the, circuit court opinion of April 28, 1980, does not mention [sec] 28-34. Therefore, we express no opinion as to the constitutionality of these provisions of the Flint City Code. Affirmed.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN.
SOUTHERN DIVISION

Filed 97 Aug -6 PM 3:31
Ronald ? Weston Clerk

GERALD D. BUSH,
Plaintiff,

Case No. 1:97-CV-51
-vs- HON. DOUGLAS W. HILLMAN

JAMES DONKERSLOOT, et al.,
Defendants.

ORDER DENYING EMERGENCY EXPARTE MOTION FOR INJUNCTION

This is a pro se action arising from a civil infraction proceeding in the state district court. Plaintiff has filed a motion for ex parte injunctive relief, seeking an order from this court staying proceedings in the 58' District Court to enforce a civil infraction judgment. The motion argues that the district court proceedings threaten to subject plaintiff to double jeopardy. This court is acting on behalf of Senior Judge Douglas W. Hillman, who is temporarily out of state, because of the emergency nature of plaintiff s request.

Plaintiff s motion must be denied on a number of grounds. First, requests for ex parte injunctive relief must be supported by an affidavit setting forth specific facts showing immediate and irreparable harm. Fed. R. Civ. P. 65(b). Plaintiff has not submitted an affidavit, nor do his filings show the existence of irreparable harm. Any error in the state court proceedings may be corrected by a direct appeal, which is an adequate remedy at law.

Second, the relief requested is clearly barred by the Anti-Injunction Act, 28 U.S.C. § 2283, which prevents federal courts from staying proceedings in the state courts, except in narrow circumstances not present here.

Finally, it is doubtful that the double jeopardy clause has any application to civil infraction proceedings, which are by their very nature civil. See *United States v. Martin*, 95 F3d 406 (6th Cir. 1996).

Accordingly, plaintiff 's Emergency ExParte Motion for Injunction is hereby **DENIED.**

/s/ Benjamin F. Gibson
Benjamin F. Gibson, Senior District Judge
Acting for, Douglas W. Hillman, Senior District Judge
Dated: August 6, 1997

UNITED STATES OF AMERICA
DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Filed 97 Aug 11 PM 3:55
Ronald ? Weston Clerk

GERALD D. BUSH,
Plaintiff,

Case No. 1:97-cv-51

-vs-

HON. DOUGLAS W. HILLMAN

JAMES DONKERSLOOT, et al.,
Defendants.

ORDER OF DISMISSAL,

This court having sent to plaintiff a notice of impending dismissal and plaintiff having failed to provide proof of service of the complaint upon certain of the defendants;

NOW, THEREFORE, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, as to defendants James Donkersloot, City of Zeeland and the State of Michigan, this matter is hereby **DISMISSED** without prejudice for failure to serve within 120 days after filing the complaint.

IT IS SO ORDERED.

/s/Douglas W. Hillman
Douglas W. Hillman
Senior District Judge

Dated: Aug. 11, 1997

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Filed 97 Aug 26 PM 4:07
Ronald ? Weston Clerk

GERALD D. BUSH,
Plaintiff,
-vs-
JAMES DONKERSLOOT, et al,
Defendants,

Case No. 1:97-cv-51
HON. DOUGLAS W. HILLMAN

ORDER

Defendants Donkersloot and the City of Zeeland have filed a motion to dismiss. W.D. Mich. L.R. 27 requires that briefs filed in support of or in opposition to a motion "shall contain a concise statement of the reasons in support of the party's position and shall cite all applicable federal rules of civil ... procedure, all applicable local rules, and the other authorities upon which the party relies."

Defendants' supporting brief does not meet these requirements. Therefore, until such time as defendants file an appropriate brief in support of their motion, the court will not consider it, and plaintiff is not required to respond.

IT IS SO ORDERED,

/s/ Douglas W. Hillman
Douglas W. Hillman
Senior District Judge

Dated: Aug 26, 1997

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Filed 97 Oct 17 PM 1:38
Ronald ? Weston Clerk

GERALD D. BUSH,
Plaintiff,

Case No. 1:97-cv-51

-vs-

HON. DOUGLAS W. HILLMAN

JAMES DONKERSLOOT, et al.,
Defendants.

OPINION

This is a civil rights action, which purports to allege violations of 42 U.S.C. §§ 1981, 1983, 1985, and 1988. The matter is before the court on several pending motions filed by the parties and the court's sua sponte consideration of its subject matter jurisdiction, pursuant to Fed. R. Civ. P. 12(h)(3).

The first matter before the court is plaintiff s emergency motion for reconsideration of the court's August 6, 1997 order, which denied plaintiff s emergency motion for injunction. Upon review, I find nō error in the August 6 order. Accordingly, for the reasons set forth in the court's August 6, 1997 order, plaintiff's motion for reconsideration is denied.

Plaintiff's second motion seeks reconsideration of the court's August 11, 1997 order, which dismissed without prejudice plaintiff s claims against defendants James Donkersloot, the City of Zeeland and the State of Michigan for failure to provide proof of service. Subsequent to the issuance of the dismissal, defendants Donkersloot and City of Zeeland formally moved to dismiss for failure to serve within 120 days (Docket # 1O). Plaintiff contends that he mailed a copy of the complaint and waiver of service form to these defendants in accordance with Fed. R. Civ. P. 4(d), but that defendants failed to return signed waiver forms to

plaintiff. Plaintiff asserts that this court should consider process to be sufficient because, by their appearance, these defendants demonstrate they have actual notice of the action.

Plaintiff's argument, however, is inconsistent with the federal rules. While Rule 4(d) allows parties to waive formal service of process, it does not eliminate the requirement of formal service. In order for the waiver of service provision to operate, plaintiff must file the signed waiver of service with the court. See Fed. R. Civ. P. 4(d)(4). Plaintiff has not filed such waiver and, in fact, contends that defendants Donkersloot and City of Zeeland have refused to sign those waivers. Therefore, by plaintiff's own admissions, service has not been completed within the rules. Accordingly, because service of process has not been completed within the 120 days provided by Fed. R. Civ. P. 4(m) and plaintiff having offered no evidence of good cause for the failure to serve, plaintiff's motion for reconsideration of its order of August 11, 1997, dismissing plaintiffs Donkersloot and City of Zeeland is denied.

With respect to that part of the court's order dismissing defendant State of Michigan, the Attorney General has filed a notice of substitution as counsel representing defendants Albright and Meyers. In its caption, that document represents that the Attorney General is appearing for defendant State of Michigan as well. Cover letters and proof of service also note the Attorney General's appearance for the State of Michigan. See Docket # 14. No objection to the sufficiency of service of process has been filed by the State of Michigan in any responsive pleading, as required by Fed. R. Civ. P. 12(b)(4) and (5) and 12(h)(1). Arguably, therefore, the appearance filed by the Attorney General may constitute waiver of any objection to the adequacy of process or service of process (-2-)

However, also presently pending is a motion filed by defendants Albright and Meyers to dismiss on the basis of absolute immunity and for lack of subject matter jurisdiction. Moreover, pursuant to Fed. R. Civ. P. 12(h)(3),

this court may dismiss an action on its own motion where it appears that the court lacks jurisdiction over the subject matter of the action. Accordingly, the court will consider the question of subject matter jurisdiction over the claims against Albright, Meyers and the State of Michigan, the remaining three defendants.

Defendant Albright is a magistrate with Michigan's 58" District Court. Defendant Meyers is a district judge of that court. Plaintiff's complaint alleges that defendant Albright violated plaintiff's civil rights by finding him in violation of a City of Zeeland civil ordinance for conduct involving the storage of vehicles on his private property. Plaintiff alleges that he elected to receive an informal hearing under state law before defendant Albright. Following the informal hearing, plaintiff was fined on the violations in the amount of $100 per vehicle and $44 in court costs, for a total fine of $1,044.

As provided by Mich. Court Rule 4.101(G), plaintiff thereafter filed a motion to set aside judgment, alleging that the civil penalty was imposed in violation of double jeopardy, on the basis that plaintiff had been found guilty of similar ordinance violations with respect to two of his other properties. That motion was heard by defendant Meyers and was denied on December 31, 1996. Plaintiff's complaint does not state whether he appealed the decision of the district court.

Plaintiff's complaint is grounded exclusively in the facts involved in the state court proceeding to enforce a city ordinance. He claims that the state court violated his civil rights by subjecting him to double jeopardy and by requiring him to post an appeal bond in the amount of the fine, as required by Mich. Court Rule 4.101(G).

Plaintiff's claims are not within the jurisdiction of this court. The thrust of plaintiff's complaint is to challenge a particular decision of a state court. As the Supreme Court stated in District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486 (1983), federal district courts do not have jurisdiction:

> "over challenges to State Court decisions in particular cases arising out of judicial proceedings, even if those challenges allege that the State Court's action was unconstitutional. Review of those decisions may be had only in this Court."

See also Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). The decision constitutes recognition of a bedrock principle of federalism that inferior federal courts do not have the power to review state court decisions. Kanilewicz v. Bank of Boston Corp., 92 F.3d 506, 509 (7th Cir. 1996), cert. denied, 117 S. Ct. 1569 (1997). See also United States v. Owens, 54 F.3d 271, 274 (6th Cir. 1995). A plaintiff may not avoid this jurisdictional requirement by casting the complaint in the form of a federal civil rights action. See Ritter v. Ross, 992 F.2d 750, 754 (7th Cir. 1993), cert. denied, 510 U.S. 1046 (1994).

Further, even where they have jurisdiction, federal courts will generally abstain from interfering with state judicial proceedings. See Younger v. Harris, 401 U.S. 37 (1971). Where a state court proceeding is ongoing and where the state proceedings implicate important state interests, the court will abstain if there exists an adequate opportunity in the state proceeding to raise constitutional challenges. Id. Moreover, a party may not obtain federal intervention by foregoing state appellate procedures. See New Orleans Public Service, Inc. v. Council of City of New Orleans, 491 U.S. 350, 369 (1989). (-4-)

In the instant case, plaintiff was able to raise his constitutional claims in the Michigan district court, and in fact did raise those claims. The enforcement of state and municipal ordinances is central to the role of state and local governments in our federal system.

Plaintiff's remedy for his perceived wrong is through the appeal process under state law subject ultimately to review by the United States Supreme Court. This court, however, may not engage in such review.

For the foregoing reasons, plaintiff s complaint against defendants Albright, Meyers and the State of

Michigan is dismissed for lack of subject matter jurisdiction. (Fn1) The motion of defendants Albright and Meyer to dismiss (Docket # 17) is **GRANTED.** The motion of defendants Donkersloot and City of Zeeland to dismiss (Docket #10) is **GRANTED**. Plaintiffs motion for reconsideration (Docket of the court's August 6, 1997 order dismissing defendants Donkersloot and the City of Zeeland # 15) is **DENIED.** Plaintiff's motion for reconsideration of the court's August 11, 1997 order (Docket # 12) is **DENIED.**

/s/ Douglas W. Hillman
Douglas W. Hillman Senior District Judge

Dated: Oct 17 1997

1 I further observe that plaintiff's claims for damages against defendants Albright and Meyers unquestionably are barred by absolute judicial immunity. See Mireles v. Waco, 502 U.S, 9, 11-13 (1991). Moreover, it is apparent that damage claims against the State of Michigan are barred by the Eleventh Amendment. See Cox v. Kentucky Dep't of Transp., 53 F.3d 146, 152 n.2 (6th Cir. 1995).

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Filed 97 Oct 17 PM 1:38
Ronald ? Weston Clerk

GERALD D. BUSH,
Plaintiff,

Case No. 1: 97-cv-5 I

-vs-

HON. DOUGLAS W. HILLMAN

JAMES DONKERSLOOT, et al
Defendants.

ORDER

In acordance with the opinion filed this date,

IT IS ORDERED that plaintiff s complaint against defendants Albright, Meyers and the State of Michigan is dismissed for lack of subject matter jurisdiction.

IT IS FURTHER ORDERED that the motion of defendants Albright and Meyer to dismiss (Docket # 17) is **GRANTED.**

IT IS FURTHER ORDERED that the motion of defendants Donkersloot and City of Zeeland to dismiss (Docket #1O) is **GRANTED.**

IT IS FURTHER ORDERED that plaintiff s motion for reconsideration of the court's August 6, 1997 order dismissing defendants Donkersloot and the City of Zeeland (Docket # 15) is **DENIED.**

IT IS FURTHER ORDERED that plaintiff s motion for reconsideration of the court's August 11, 1997 order (Docket # 12) is **DENIED.**

/s/ Douglas W. Hillman
Douglas W. Hillman
Senior District Judge

Dated: OCT 17 1997

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Filed 97 Nov 26 PM 1:39
Ronald ? Weston Clerk

GERALD D. BUSH,
Plaintiff,

Case No. 1:97-cv- 51

-vs-

HON. DOUGLAS W. HILLMAN

JAMES DONKERSLOOT, et al.,
Defendants.

ORDER

This matter is before the court on plaintiff s motion for reconsideration of the court's October 17, 1997, order dismissing plaintiff s complaint. First, plaintiff s motion is not timely. It was not filed within the ten-day period prescribed by Fed. R. Civ. P. 59(e) for motions to alter or amend judgment, and plaintiff has identified no basis for relief under Fed. R. Civ. P. 60(b). Second, plaintiff s motion merely restates arguments already fully addressed by the court in its October 17, 1997, opinion and order.

For the foregoing reasons and for the reasons stated in this court's October 17, 1997, opinion and order, plaintiff s motion for reconsideration is **DENIED.**

Plaintiff also seeks an extension of time to file an appeal. This motion is timely, and upon consideration, pursuant to Fed. R. App. P. 4(a)(5) plaintiff is **GRANTED** an extension of time to December 17, 1997, within which to file his Notice of Appeal.

IT IS SO ORDERED.

/s/ Douglas W. Hillman
Douglas W. Hillman
Senior District Judge

Dated: Nov. 26, 1997

(Plaintiff's Exhibit 1)

HOUSING FOR THE ELDERLY

A building or group of buildings containing dwellings where the occupancy of dwellings is restricted to persons 60 years of age or older or couples where either the husband or wife is 60 years of age or older. This does not include a development that contains convalescent or nursing home as licensed under Act No. 139 of the Public Acts of 19:56, as amended, being sections 33IA51 to 331.660 of the Compiled Laws of 1948; or a mental hospital for mental patients licensed under sections 51 and 52 of Act No. 151 of the Public Acts of 1923, as amended, being sections 330.61 and 330.62 of the Compiled laws of 1948.

SECTION 1.1OOO DEFINITIONS - I

INOPERABLE VEHICLE

A motor vehicle which can no longer propel itself.

DEFINITIONS - J

JUNK

Any worn out or discarded materials including but not necessarily limited to, scrap metal, inoperable motor vehicles and parts, construction material household wastes, including garbage and discarded appliances, and yard debris.

JUNKYARD

An open area where waste, used or secondhand materials are bought and sold, exchanged, stored, baled, packed, disassembled, or handled. These materials include, but are not limited to. scrap iron and other metal, paper, rags, rubber tires, and bottles. A 'junk yard' includes automobile wrecking yards and includes any, area of more than two hundred (200) square feet for storage, keeping or abandonment of junk but does not include uses established entirely within enclosed buildings.

City of Zeeland Zoning Ordinance Chapter I - Definitions

SECTION 3.2700 JUNK ON RESIDENTAL PARCELS
A. No junk shall be permitted to accumulate on a lot outside of an enclosed building which is zoned or used as a residential lot, provided, however, that nothing in this section shall be deemed to prohibit the establishment and use of a compost pile as otherwise is permitted by this ordinance.
B. A violation of this Section shall be a civil infraction and the penalties and enforcement of this section shall be subject to the terms of Section 20.300 of this ordinance as it is applicable to civil infractions.

City of Zeeland
Zoning Ordinance 23a Chapter 3 - General Provision
Amended per Ord.#653, dated 01/20/97

B.

Accessory buildings or structures, including but not limited to, porches enclosed by walls, or garages, attached to a dwelling unit or other n-Lain building in a substantial manner, such as by a wall or roof, shall be deemed a part of such main budding, for the purpose of determining compliance with the provisions of this Ordinance concerning required yards.

SECTION 3.1200 PARKING, STORAGE AND REPAIR OF VEHICLES, UTILITY TRAILERS AND WAGONS
A. The repair, restoration, storage and maintenance of vehicles on any residentially used property is prohibited unless occurring entirely inside a fully enclosed building. Inoperable or unlicensed vehicles and vehicle parts shall also be stored inside a building.

The following however, shall not be subject to the fore stated requirements of thissection: Procedures or projects on vehicles that last less than forty-eight (48) hours in duration to complete. Procedures or projects or sequences of

procedures or projects that result or which may result in a vehicle being immobile or inoperable for more than forty-eight (48) hours may only be done within a fully enclosed building& and may not have any part of the procedure or project, for example but not limited to, welding, grinding, sanding painting, major motor vehicle repairs, or any other activity lasting less than forty- eight (48) hours, done outside of the building.

B. It shall be unlawful for the owner or lessee of any residentially used property to permit the open storage or the parking outside of a building of:

1. any commercially used truck or any truck with a commercial sign which have an elected gross vehicle weight in excess of three (3) ton;
2. a motor vehicle with a cargo box or a cargo container which is in excess of eight feet in length;
3...a vehicle that is a semi-tractor truck and/or semi-trailer, bulldozer, earth carrier, crane or any other similar item of equipment or machinery unless parked thereon while in use for construction being conducted on such lot; or,
4...more than one noncommercial utility trailer or wagon designed for pulling behind a motor vehicle which may be used for hauling;

provided that such prohibited vehicles do not include a recreational vehicle which is stored for personal use.

C. A violation of this Section shall be a civil infraction, and the penalties and enforcement of this section shall be subject to the terms of Section 20.300 of this ordinance as it is applicable to civil infractions.

Citv of Zeeland
Zoning Ordinance 19a Chapter 3-General Provisions
Amended per Ord.#653, dated 01/20/97
Amended per Ord.#670, dated 04/20/98

SECTION 3.2700

JUNK ON RESIDENTAL PARCELS

A. No junk shall be permitted to accumulate on a lot outside of an enclosed building which is zoned or used as a residential lot, provided, however, that nothing in this section shall be deemed to prohibit the establishment and use of a compost pile as otherwise is permitted by this ordinance.

B. A violation of this Section shall be a civil infraction and the penalties and enforcement of this section shall be subject to the terms of Section 20.300 of this ordinance as it is applicable to civil inftactions.

CHAPTER 5
R-1 SINGLE FAMILY RESIDENTIAL DISTRICT
SECTION 5.100 INTENT

This District is intended to provide a low-density, single family residential living environment and to foster stable, high quality neighborhoods. At the same time the regulations for this district recognize the need to preserve existing housing stock, allow infill development within older subdivisions, and provide housing that is affordable for the present and future residents of Zeeland. Non-residential uses are only allowed to the extent that they serve to further the creation of stable residential neighborhoods.

SECTION 5.200 PERMITTED USES

Land and/or buildings in the R-1 District shall be used for the following purposes by right:

A. Single-family detached dwellings.

B. Family day care homes.
C. State licensed residential family care facilities for six or fewer residents, not including the house parents.
D. Accessory buildings, structures, and uses.

SECTION 5.300 SPECIAL LAND USES

Land and/or buildings in the R-1 District shall be used for the following purposes when approved by the Planning Commission in accordance with the requirements of Chapter 18:

A. Utility and public service buildings, without storage yards, but not including essential public services such as poles, wires, and underground utility systems.
B. Private non-commercial recreation areas and institutional or community recreation centers.
C Planned unit developments.
D. Site plan condominiums for single-family homes which meet the site development requirements of Section 18.800.

SECTION 5.400 SITE DEVELOPMENT REQUIREMENTS

All Permitted Uses and Special Land Uses are subject to the following Site Development Requirements:

A. Site Plan Review is required for all Special Land Uses in accordance with Chapter 17, Section 17.100.
B. Landscaping and screening are required in accordance with Chapter 17, Section 17-200.
C. Parking is required in accordance with Chapter 17, Section 17-3m.
D. Signs are permitted in accordance with the requirements of Chapter 17, Section 17.400.
E. Setbacks, height, area, and lot dimensions are required as noted below and on the chart in District Regulations, Chapter 16:

City of Zeeland
Zoning Ordinance Residential District 26 Chanter 5 - Single Family, Amended per Ord.#587, dated 3/1/93, Amended per Ord.#654, dated 3/17/97, Amended per Ord.#660, dated 7/21/97

Plaintiff's EXHIBIT #3, 3-22-99
PH-111.2.3 Chairman;

PH-111.2.5 Secretary:

PH-111.3 Notice of Meetings. The board shall meet upon notice from the chairman, within thirty days of the filing of an appeal, or at stated periodic meetings.

This section of the code is deleted.

This section of the code is deleted.

pm-111.5 Postponed hearing: The Board upon a motion duly made and approved, may postpone the hearing of an appeal for up to thirty (30) days.

PM-111.6.1 Resolution:

This section of the code is deleted

PM-303.3 Sidewalks and Driveways: All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions. Stairs shall comply with the requirements of Sections PM-304. 10 and PM-702.9. A paved area measuring not less than 101 x 201 must be provided for each dwelling unit in accordance with the requirements of the Zoning ordinance as to location. Every driveway must be paved between the street pavement to a point not less than ton feet (101) into the private property driveway.

PM-303. 8. 1 Motor vehicles residential areas:

A. No motor vehicle which is not displaying a current license plate, with the current yearly sticker, in accordance

with the regulations of the state of Michigan, shall be parked on any residential property outside of a building.

B . No motor vehicle shall be parked on any residential property outside of a building if said vehicle shall be in a state of major disassembly, disrepair, or shall be in the process of being stripped or dismantled.

C. A motor vehicle of any type shall not at any time undergo major overhaul, including body work, outside of a building on any residential property.

D. Neither shall any motor vehicle be stored outside a building under a tarp, cloth, plastic or other covering unless a current license plate, with the current yearly sticker, which is displayed in accordance with the regulations of the state of Michigan, remains clearly visible.

D.[sic] A violation of this section shall be a civil infraction. For a first offense, a civil fine of not less than one hundred ($100.00) dollars shall be levied, plus costs and other sanctions as deter- mined by the Court. The civil fine for any first repeat offense shall be no less than $250.00 plus costs and sanctions. A civil fine for any offense which is a second repeat offense or any subsequent repeat offense shall be not less than $500 plus costs and sanctions. Sanctions shall be permitted as authorized under Chapter 87 of Act No 236 of the Pubic Acts of 1961, as amended, and other applicable laws. As used in this Section, repeat offense" means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision (i) committed by a person within any twelve month period and (ii) for which the person admits responsibility or is determined to be responsible. Each day on (-3-)

Plaintiff's EXHIBIT #3, 3-22-99 (above)

which any violation of this section continues shall constitute a separate offense and shall be subject to penalties or sanctions as a separate offense. in addition to any remedies available at law, the City may bring an action for an injunction or other process against a person to restrain, prevent or abate any violation of this section. The characterization of a violation of this section and the penalties for a violation of this section shall be in lieu of those prescribed in PM-109.2.

PM-303.8.2 Motor vehicles non-residential areas:

A. No motor vehicle which is not displaying a current license plate, with the current yearly sticker, in accordance with the regulations of the state of Michigan, shall be parked on any non-residential property outside of a building, unless such non-residential property is a gas station, a licensed car lot, a licensed motor vehicle repair facility, a junk yard within the heavy industrial zoned district, or any other business which has been granted a special land use permit by the City for the parking of such vehicles on its property.

B. No motor vehicle shall be parked on any non-residential property outside of a building if said vehicle shall be in a state of major disassembly, disrepair, or shall be in the process of being stripped or dismantled, unless ouch non-residential property is a gas station, a licensed car lot, a licensed motor vehicle repair facility, a junk yard within the heavy industrial zoned district, or any other business which has been granted a special condition use permit by the City for the parking of such vehicles on its property.

C. Neither shall any motor vehicle be stored outside a building under a tarp, cloth, plastic or' other covering unless a current license plate, with the currently yearly sticker, which is displayed in accordance with the regulations of the state of Michigan, remains clearly visible, unless such non-residential property is a gas station, a licensed car lot, a licensed motor vehicle repair facility, a junk yard within the heavy industrial zoned district, or any

other business which has been granted a special land use permit by the City for the parking of such vehicles on its property.

D. A violation of this section shall be a civil infraction. For a first offense, a civil fine of not less than one hundred ($100.00) dollars shall be levied, plus costs and other sanctions as deter- mined by the Court. The civil fine for any first repeat offense shall be no less than $250.00 plus costs and sanctions. A civil fine for any offense which is a second repeat offense or any subsequent repeat offense shall be not less than $500 plus costs and sanctions. sanctions shall be permitted as authorized under Chapter 87 of Act No. 236 of the Pubic Acts of 1961, as amended, and other applicable laws. As used in this Section, "repeat offense" means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision (i) committed by a person within any twelve month period and (ii) for which the person admits responsibility or is determined to be responsible. Each day an which any violation of this section continues shall constitute a separate offense and shall be subject to penalties or sanctions as a separate offense. In addition to any remedies available at law, (-4-) the City may bring an action for an injunction or other process against a person to restrain, prevent or abate any violation of this section. The characterization of a violation of this section and the penalties for a violation of this section shall be in lieu of those prescribed in PH-109.2.

PH-303.9 Residential Composting: Residential composting sites are only permitted in rear yards and must be located at least three feet (3') from any adjacent property and must be screened with a wood fence or planting at least as high as the compacting operation and contents on any side within view of adjacent properties. A composting site may not occupy more than 100 square feet of a rear yard.

PH-304.12 Insect screens: During the period from April 1 to October 31, every door, window and other outside opening

utilized or required for ventilation purposes serving any structure containing habitable roams, food preparation areas, food service areas, or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch and every swinging door shall have a self -closing devise in good working condition.

Exception: Screen doors shall not be required for out-swinging doors or other types of openings which make screening impractical, provided other approved means, such as air curtains or insect repellant fans are employed.

PH-306.3.2 Containers: The operator of every establishment producing garbage shall provide, and at all times cause to be utilized, leakproof approved containers provided with close-fitting covers for the storage of such materials until removed from the premises for disposal. Curbside containers placed at curbside for curbside pickup must be containers with close fitting container covers. Trash-garbage bags may be used when provided by the occupant's waste hauler and if such bags are not subject to animals destroying the bag causing the contents to be strewn about the area.

PM-508. 1. 1 Storm Water Disposal: An approved system of storm water disposal shall be provided and maintained for the safe and efficient drainage of roof and paved areas, yards and courts, and other open areas on the premises. Drainage may not create a nuisance for any adjacent property owners. Residential roof drain downspouts may not have extensions that discharge water closer than five feet (5′) from the common property line of an adjacent property.

PM-602.2. 1 Heat supply:
This section of the code is deleted.

PH-602.2.2 Room temperature exception:
This section of the code is deleted.

PH-602.3 Nonresidential structures Every enclosed occupied work space shall be supplied with sufficient heat during the period from October I to May 31 to maintain a temperature of not leas than 65 degrees P. (18 degrees C.) during all working hours.

Exceptions:

1. Processing, storage and operation areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.
(-5-)

(**Plaintiff's Exhibit 7** of 5-28-99, TDK - - below)
ZEELAND POLICE DEPARTMENT
INCIDENT REPORT
OFFENSE #9800-L
Victim/Complaint
Name City of Zeeland
Address 21 S Elm St.
Date 9-30-98
Case # 1284-98
City - - Zeeland, #48
County - Ottawa # 70
Location
211 W. Main
215 Alpine
119 N. Centennial
Time of Occurance
See Below
Details: Ord. #624 Violations
Officer Signature /s/ Sgt James Beyer, #4810
Date: 9-30-98

ZEELAND POLICE DEPARTMENT REPORT
COMPLAINT #: 1284-98 FILE: 98006
DATE: 09-30-98

OFFENSE: ORDINANCE #624 VIOLATION

INFORMATION: On 09-29-98 received a request from Attorney Kenneth Breeze to Zeeland City Assessor Art Grimes to assist in documenting the vehicles which appear to be in violation of Zeeland City Ordinance # 624 on properties owned by Mr. Gerald Bush, 724 East Central Avenue, Zeeland, Michigan.

On 09-30-98 I visited the properties owned by Gerald Bush, located at 211 West Main, 215 Alpine and 119 North Centennial. I photographed the vehicles on these properties and wherever possible obtained a license plate number or VIN. In most cases the vehicles were either untagged and the VIN was either obscured or unavailable.

At the 211 West Main address the following vehicles were observed:

#1 A two-toned blue GMC van,
bearing Michigan Registration KVY831

#2 A black Cadillac Elderado,
no plate, VIN of I G6AL5780EE626990.

#3 A black primered Pontiac 2 door,
no plate seen, no VIN observed.

#4 A white over brown Chevy Blazer,
Michigan Registration SYL934.

#5 A white Pontiac 6000,
no plate, VIN obscured.

#6 A blue GMC Jimmy, no plate, VIN obscured.

At the 215 Alpine address the following vehicles were observed:

#1 A white over green Ford Pick-up, no plate or VIN found.

#2 A blue Ford Pick-up, no plate or VIN found.

#3 A blue over red Ford Pick-up,
Michigan Registration VF2149.

#4 A two-toned green Oldsmobile,
2 door, VIN of 3AK17FGBMI33009.

#5 A brown GMC Jimmy, no plate seen, VIN obscured.

#6 A brown Ford Bronco, no plate seen, VIN obscured.

At the 119 North Centennial address the following vehicles were observed:

#1 A red Mercury, 2 door, VIN of INIEBM2190HW603349.

#2 A brown Ford Pick-up, no plate or VIN observed.

#3 An aqua Oldsmobile, 4 door, VIN of IG3AN69826HI40937.

#4 A white Ford Pick-up, no plate or VIN observed.

#5 A gray Ford Ranger Pick-up, no plate or VIN observed.

As of this date the vehicles at Mr. Bush's residence have not been documented. Report submitted by Sergeant James Beyer, Zeeland Police Department.

(Plaintiff's Exhibit 8 , Date 5-28-99, Rep TDK - below)

Unknown Page 52 10/22/2001At 724 East Central address, Mr. Bush's residence the following vehicles were observed:

#1 Gray Buick 4 door - No Plate, Seems drivable, Possibly Mr. Bush's personal vehicle.
#2 Yellow Chevy 2 door, No Plate seen.
#3 Gray GMC Pick up
#4 Yellow Buick Regal, No Plate Seen
#5 White and Blue Bronco, No Plate Seen
#6 Red Ford 2 door w/blue left front fender

Sgt. James Beyer

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

August 24, 2001

Mr. Gerald D. Bush
Carolyn L. Bush
724 E. Central
Zeeland, MI 49464

Re: Gerald D. Bush, el ux.
v. City of Zeeland, Michigan Application No. 01A162

Dear Mr. Bush:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Stevens, who on August 24, 2001, extended the time to and including October 26, 2001.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk

by /s/ Ruth Jones for
Jeffrey D. Atkins Assistant Clerk

Supreme Court, U.S.
FILED
JAN 11 2002
CLERK

(2)

No. 01-883

In The

Supreme Court of the United States

GERALD D. BUSH &
CAROLYN BUSH,

Petitioners,

v.

CITY OF ZEELAND, MICHIGAN,

Respondent.

On Petition For A Writ Of Certiorari To The Chief Judge Of The Court Of Appeals Of Michigan

RESPONDENT'S BRIEF IN OPPOSITION

KENNETH B. BREESE (P 27177)
Counsel of Record
CUNNINGHAM DALMAN, P.C.
Attorneys for Respondent
City of Zeeland, Michigan
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Holland, Michigan 49422-1767
(616) 392-1821

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

25 pp

QUESTION PRESENTED

Whether the Michigan Court of Appeals violated Michigan Court Rule 7.217 or abused its discretion when it dismissed Petitioners' appeal for failure to obtain a trial transcript as a condition precedent to perfecting the appeal.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings are correctly described in the petition.

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I. Neither the Record nor the Decision Below Raise an Important Federal Question or Even the Question Presented by the Petition..... 3

II. The Order of the Michigan Court of Appeals was an Appropriate Exercise of the Court's Authority Under Michigan Law..... 4

III. The Writ Does Not Suggest an Important Federal Question..... 6

Conclusion 7

Appendix

Opinion and Order of Hon. Calvin L. Bosman entered on June 21, 1999, in Ottawa County Circuit File No. 98-32500-CZ, *City of Zeeland v. Gerald Bush and Carolyn Bush* .....Res. App-1

Opinion and Order of Hon. Calvin L. Bosman entered on August 11, 1999, in Ottawa County Circuit File No. 98-32500-CZ, *City of Zeeland v. Gerald Bush and Carolyn Bush* .....Res. App-5

Claim of Appeal of Right filed by Gerald D. Bush and Carolyn Bush in Michigan Court of Appeals File No. 221983, *City of Zeeland v. Gerald Bush and Carolyn Bush*.....Res. App-7

Letter dated July 5, 2000, from the Michigan Court of Appeals to Gerald Bush.....Res. App-8

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Order of Michigan Court of Appeals entered on September 25, 2000, regarding *City of Zeeland v. Gerald Bush*.....Res. App-10

Order of Michigan Court of Appeals entered on November 6, 2000, regarding *City of Zeeland v. Gerald Bush*.....Res. App-11

Order of Michigan Supreme Court entered on May 29, 2001, regarding *City of Zeeland v. Gerald D. Bush and Carolyn L. Bush* .....Res. App-12

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RULES

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Court. Sup. Ct. R. 10(c) 1

Michigan Court Rule 2.119(F) 1

Michigan Court Rule 7.101(C)(2)(d) 2, 5

Michigan Court Rule 7.217(A) 2, 5

STATEMENT OF JURISDICTION

Certiorari is not appropriate because the decision of the Michigan Court of Appeals does not conflict with an applicable decision of another state court of last resort, a United States court of appeals or this Court. Sup. Ct. R. 10(b), 10(c).

STATEMENT OF THE CASE

Petitioners were sued in State court by Respondent as a result of improper storage of various items of property which met the definition of "junk" under Section 1.1100 of Respondent's City Ordinances. The trial court determined that the accumulation on Petitioners' four parcels of real estate, all located within the City of Zeeland, constituted a nuisance. To abate this nuisance, the court ordered Petitioners to clean up their property within a prescribed period of time. The court also provided:

> "In the event it is not voluntarily removed by defendants [Petitioners] the City [Respondent] shall have the right to remove any items remaining on defendants' four properties which are stored in violation of the Ordinance and dispose of it in any manner it deems appropriate including sale which it may apply to the cost of removal." Opinion and Order of the 20th Circuit Court, File No. 98-32500-NZ, Honorable Calvin L. Bosman presiding, dated June 21, 1999. See Res. App-3.

Petitioners filed a motion for rehearing pursuant to Michigan Court Rule 2.119(F), which was denied. Inasmuch as Petitioners did not voluntarily remove the items

referred to within the allotted time, Respondent did so. See Res. App-5.

Petitioners then filed a Claim of Appeal Of Right with the Michigan Court of Appeals on September 2, 1999. See Res. App-6. Michigan Court Rule 7.101 provides for appeals of right from decisions by various courts, including circuit courts. It also sets forth the manner of perfecting an appeal which includes the requirement that Petitioners: "Order in writing a copy of the full transcript and secure payment for it." Michigan Court Rule 7.101(C)(2)(d).

Petitioners failed to do so and were advised by the Court of Appeals on July 5, 2000 that their appeal was defective. They were given twenty-one (21) days to remedy the defect. Letter, Clerk of the Michigan Court of Appeals, dated July 5, 2000. See Res. App-7.

Petitioners failed to remedy the defect and their appeal was dismissed pursuant to Michigan Court Rule 7.217(A) for want of prosecution by failure to ensure the timely filing of the trial transcript. Michigan Court of Appeals Order, Chief Judge Richard A. Bandstra acting, dated September 25, 2000. See Res. App-8. A motion for reinstatement of appeal was then filed by Petitioners. The motion was denied. Michigan Court of Appeals Order, Chief Judge Richard A. Bandstra acting, dated November 6, 2000. Michigan Court of Appeals Docket Number: 221983. See Res. App-9.

An application for leave to appeal was then filed by Petitioners to the Michigan Supreme Court. The application was denied because the Michigan Supreme Court was "not persuaded that the questions presented should

be reviewed . . . ". Order of the Michigan Supreme Court dated May 29, 2001. Michigan Supreme Court Docket Number: 118147. See Res. App-10. At no time have Petitioners provided any court with the required transcript.

This case presents no federal question and has no far-reaching implications. Petitioners simply failed to comply with Michigan Rules of Court. The Michigan Court of Appeals ruling was proper in all respects and the Respondent respectfully urges this Honorable Court to deny the Petition for Writ of Certiorari.

ARGUMENT

I.

NEITHER THE RECORD NOR THE DECISION BELOW RAISE AN IMPORTANT FEDERAL QUESTION OR EVEN THE QUESTION PRESENTED BY THE PETITION

The case below rests on Petitioners' failure to comply with the requirements for the proper filing of an appeal of right in the Michigan Court of appeals. It involves but a single question: did the Petitioners properly order in writing a copy of the trial transcript and secure payment for it as required by Michigan Court Rule 7.101?

Although Petitioners urge that they complied with this requirement by presentation of a single letter to an unnamed individual, the letter falls far short of a specific request. See Pet. App-16. In addition, there is no evidence whatsoever in the record that Petitioners secured payment for the transcript.

Numerous arguments are raised by Petitioners in their Writ which relate to the actions by Respondent, its agents and the Michigan 20th Judicial Circuit Court. None of these arguments surmount the hurdle presented by the Petitioners' failure to properly perfect their appeal.

The order entered by the Michigan Court of Appeals was in accordance with the court rules prescribed by the Michigan Supreme Court under authority granted to it by the Constitution of the State of Michigan. That order was proper in all respects and does not call for a review by this Court.

II.

THE ORDER OF THE MICHIGAN COURT OF APPEALS WAS AN APPROPRIATE EXERCISE OF THE COURT'S AUTHORITY UNDER MICHIGAN LAW

The Constitution of the State of Michigan 1963, Article VI(1) provides for the creation of a Judicial Branch in the State of Michigan. Article VI(4) of that Constitution provides:

> "The supreme court shall have general superintending control over all courts; power to issue, hear and determine prerogative and remedial writs; and appellate jurisdiction as provided by rules of the supreme court. The supreme court shall not have the power to remove a judge."

This rule-making authority is exclusive to the supreme court of the state. *Darr v. Buckley*, 355 Mich. 392, 94 N.W.2d 837 (1959). Even the court of appeals has no inherent rule-making authority, since its limited authority

is derived from the supreme court. *People v. Sallee*, 63 Mich. App. 146, 234 N.W.2d 180 (1975).

The Michigan Supreme Court has established rules of court which, among other things, govern the procedure for appeals. Michigan Court Rules 7.101(C)(2)(d) sets forth the clear and unambiguous requirement that a transcript of the trial proceedings be ordered and payment for the same be secured. The importance of this requirement is reinforced in Michigan Court Rule 7.217, the appellate rule dealing with involuntary dismissals of appeals:

> RULE 7.217 INVOLUNTARY DISMISSAL OF CASES
>
> (A) Dismissal. **If the appellant,** or the plaintiff in an original action under MCR 7.206, **fails to order a transcript,** file a brief, or comply with court rules, **the clerk will notify the parties that the appeal may be dismissed for want of prosecution unless the deficiency is remedied within 21 days after the date of the clerk's notice of deficiency. If the deficiency is not remedied within that time, the chief judge or another designated judge may dismiss the appeal for want of prosecution.**
>
> (B) Notice. A copy of an order dismissing an appeal for want of prosecution will be sent to the parties and the court or tribunal from which the appeal originated.
>
> (C) Other Action. In all instances of failure to prosecute an appeal to hearing as required, the chief judge or another designated judge may take such other action as it deems appropriate.

> (D) Reinstatement. Within 56 days after the date of the clerk's notice of dismissal pursuant to this rule, the appellant or plaintiff may seek relief from dismissal by showing mistake, inadvertence, or excusable neglect. [Emphasis added]
>
> [Effective March 1, 1985; amended effective February 1, 1994; September 1, 1999.]

The Exhibits demonstrate that the Michigan Court of Appeals complied with this rule by informing Petitioners of their defect and advising them that their appeal would be involuntarily dismissed if it was not remedied. Petitioners have no claim that the Michigan Court of Appeals acted unreasonably, abused its discretion or otherwise violated the applicable court rules.

III.

THE WRIT DOES NOT SUGGEST AN IMPORTANT FEDERAL QUESTION

Dismissal of Petitioners' appeal under Michigan Rule 7.217 is a matter of state law and not a federal question. This conclusion is reached by a cursory examination of the Tenth Amendment to the United States Constitution, which governs powers reserved to states or the people:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people."

It is axiomatic that the power of each state to maintain a judicial branch of its government is an incident of

sovereignty of each of the states. *Gray v. Hakenjos*, 366 Mich. 588, 115 N.W.2d 411 (1962).

> "Without any doubt it rests with each State to prescribe the jurisdiction of its appellate courts, the mode and time of invoking that jurisdiction, and the rules of practice to be applied in its exercise; and the state law and practice in this regard are no less applicable when Federal rights are in controversy than when the case turns entirely upon questions of local or general law." *John v. Paullin*, 231 U.S. 583, 585 (1913).

The Writ urged by Petitioners has no far-reaching implications. As set forth above, it is a matter for the States to determine the jurisdiction of their appellate courts and to regulate those bodies by promulgation of rules of court. Petitioners show no facts which would support an argument that the rules were unfairly or arbitrarily applied to them; and they can show no such facts. The rule applied, Michigan Court Rule 7.217, makes clear the necessity to secure a trial transcript and is transparent with regard to the consequences of failure to do so. The proper application of Michigan Court Rule 7.217, the only matter before this Honorable Court, is the result of Petitioners' own acts.

CONCLUSION

For all of the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully Submitted,

KENNETH B. BREESE

STATE OF MICHIGAN

IN THE CIRCUIT COURT
FOR THE COUNTY OF OTTAWA

CITY OF ZEELAND,
Plaintiff,

v.

GERALD BUSH and
CAROLYN BUSH,
Defendants,
_____/

OPINION AND ORDER
File No. 98-32500-CZ
Judge: Calvin L. Bosman

Plaintiff, City of Zeeland, brings this action seeking to abate a nuisance maintained by defendants. The City requests that this Court order defendants to remove various items described by the City as junk from four parcels of property owned by defendants. Each parcel owned by defendants is zoned residential. The four parcels are located at 724 E. Central Ave., defendant's residence, and other property located at 211 W. Main; 215 Alpine; and, 119 N. Centennial.

The items include but are not limited to the following:

at 211 W. Main – four unregistered motor vehicles;
at 215 Alpine – five unregistered motor vehicles;
at 119 N. Centennial – five unregistered motor vehicles;
at 724 E. Central – four unregistered motor vehicles.

Additionally, on the various properties are stored an auto transmission, an inoperable lawn mower, water tanks, numerous tires and various car parts.

Zeeland's ordinance prohibits the outside storage of unlicensed motor vehicles or disassembled motor vehicles on residentially zoned property. City Ordinance 303.8.1. Section 1.1100 of the Ordinance describes "junk" as:

> Any worn out or discarded materials including, but not necessarily limited to, scrap metal, inoperable motor vehicles and parts, construction material, household wastes, including garbage and discarded appliances, and yard debris.

Most of the items on the four properties fall under the Ordinance definition of junk, or unlicensed motor vehicles.

Defendant defends his action on the basis of double jeopardy as he has been previously criminally prosecuted by the City and the 58th District Court for maintaining these above described items on his property in violation of the Ordinance. Although the facts may be the same there is a difference between being criminally prosecuted twice for the same act and the City's efforts through a civil suit to abate a nuisance. The later is not a criminal action and criminal sanctions cannot be imposed and therefore does not constitute double jeopardy.

Defendant also claims: "The charge is vague and arbitrary and and therefore violates the Constitution First Amendment." Defendant cites some criminal cases in support of this claim. The Ordinance very clearly

describes the proscribed conduct. There is nothing vague about it at all.

Defendant also claims: The City is attempting to take from them property without just compensation contrary to the 5th and 14th Amendments of the United States Constitution. The City is not attempting to take any property from defendant. The City is merely attempting to get defendant to store his treasures in a lawful manner, something defendant cannot do on residentially zoned property unless it is stored within a building.

Finally: Defendant claims they "have the right to be left alone and right to pursue happiness". Defendant's argument is a veiled way of saying that zoning ordinances should not be enforced.

Defendant raises several other issues in his brief, none of which apply in this case.

The accumulated items located on the four properties are, for the most part, in violation of Zeeland's Ordinance. Maintaining them on the residential property in the fashion done by defendant does constitute a nuisance.

DEFENDANTS ARE HEREBY ORDERED To remove all such unlicensed and/or inoperable motor vehicles, all motor vehicle parts, inoperable machines and equipment and other items described by the Ordinance as junk which is not stored inside. Said removal shall be completed within 45 days from the date of this Opinion and Order. In the event it is not voluntarily removed by defendants the City shall have the right to remove any items remaining on defendant's four properties which are stored in violation of the Ordinance and dispose of it in

any manner it deems appropriate including sale which it may apply to the cost of removal. Neither defendant nor their agents shall interfere with the City's efforts to remove said property if not moved within the time allotted the defendants.

Dated: June 21, 1999

/s/ Calvin L. Bosman
Calvin L. Bosman
Circuit Court Judge

STATE OF MICHIGAN

IN THE CIRCUIT COURT
FOR THE COUNTY OF OTTAWA

CITY OF ZEELAND,

Plaintiff,

v.

GERALD BUSH and
CAROLINE BUSH,

Defendants.

OPINION
and
ORDER
File No. 98-32500-CZ

This is an action to abate a nuisance. Defendants bring a motion for "rehearing and temporary stay" of this Court's opinion and order of June 21, 1999.

Motions for rehearing are governed by MCR 2.119(F). "No response to the motion may be filed, and there is no oral argument, unless the court otherwise directs." MCR 2.119(F)(2). MCR 2.119(F)(3) provides, in pertinent part: "Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted."

This Court finds that defendants' motion merely presents the same issues ruled on by the Court in the opinion and order of June 21, 1999. Therefore, defendants' motion for rehearing and temporary stay is denied.

It is so ordered.

Dated: August 11, 1999

/s/ Calvin L. Bosman
Calvin L. Bosman, Circuit Judge

STATE OF MICHIGAN
IN THE COURT OF APPEALS

CITY OF ZEELAND,
Plaintiff-Appellee

v

GERALD BUSH
CAROLYN BUSH
Defendants-Appellants

MCA ___
Lower crt #98-32500-CZ

GERALD D. BUSH
CAROLYN L. BUSH
724 E. Central
Zeeland, Michigan 49464
616-772-2398

CLAIM OF APPEAL OF RIGHT

Gerald and Carolyn Bush, Defendants, claim an appeal of right from the decision and order entered on June 22, 1999 and rehearing decision filed on August 13, 1999 in the Ottawa County Circuit Court by Judge Calvin Bosman.

The decisions and orders appealed from are attached to the Court of Appeals' Claim of Appeal MCR 7.204(C)(1).

Dated: Sept. 2, 1999

/s/ Gerald D. Bush
Gerald D. Bush

/s/ Carolyn Bush
Carolyn Bush

[LOGO]
State of Michigan

Court of Appeals

Grand Rapids Office

[Names and Addresses Omitted In Printing]

July 5, 2000

BUSH GERALD
724 E CENTRAL
ZEELAND MI 49464

RE: CITY OF ZEELAND V GERALD BUSH
Court of Appeals No. 221983
Lower Court No. 98-32500 CZ

Dear Appellant:

Our records indicate that you filed an appeal in this matter but have failed to perfect the appeal by acting to ensure the timely filing of the transcript. The matter is now eligible for INVOLUNTARY DISMISSAL or other action under MCR 7.217. If the transcript is not filed [or other appropriate action taken as outlined in our Internal Operating Procedure 7.210(B)(3)-2] within 21 days of the date of this letter, you will be assessed $200 costs and may suffer dismissal of the appeal (if you are retained counsel) or remand to the trial court for the appointment of substitute counsel (if you are appointed counsel).

If the parties have settled or appellant wishes to abandon the appeal, you may file a stipulation to dismiss (with defendant's affidavit if you are appointed counsel in a

criminal appeal). The stipulation must be signed by counsel of record for all parties pursuant to MCR 7.218.

Yours very truly,

/s/ LZ
Lori M. Zarcecki
Deputy Clerk

CG: CSTRONG
CC: BREESE KENNETH B

IN THE MICHIGAN COURT OF APPEALS

ORDER

RE: **City of Zeeland v. Gerald Bush**
Docket No. **221983**
L. C. No. **98-32500-CZ**

Richard A. Bandstra, Chief Judge, acting under MCR7.217(A), orders:

The above appeal is DISMISSED for want of prosecution, appellant having failed to ensure the timely filing of the transcript.

/s/ R. Bandstra

[SEAL]

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

9-25-00	/s/ Carl L. Gromek
Date	Chief Clerk

IN THE MICHIGAN COURT OF APPEALS

ORDER

RE: **City of Zeeland v. Gerald Bush**
Docket No. **221983**
L. C. No. **98-32500-CZ**

Richard A. Bandstra, Chief Judge, acting under MCR7.217(A), orders:

The motion for reinstatement of appeal is DENIED.

/s/ R. Bandstra

[SEAL] A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

11-6-00 /s/ Carl L. Gromek
Date Chief Clerk

Order

Entered: May 29, 2001

118147

CITY OF ZEELAND,

Plaintiff-Appellee,

v

GERALD D. BUSH and
CAROLYN L. BUSH,

Defendants-Appellants.

Michigan Supreme Court
Lansing, Michigan
[names Omitted In Printing]

SC: 118147
COA: 221983
Ottawa CC: 98-032500-CZ

On order of the Court, the application for leave to appeal from the September 25, 2000, decision of the Court of Appeals is considered, and it is DENIED because we are not persuaded that the questions presented should be reviewed by this Court.

[SEAL]

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 29, 2001 /s/ Corbin R. Davis